2520.

SUPREME COURT OF THE UNITED STATES.

No. 184.

JESSE B. CLEMENTS, PLAINTIFF IN ERROR,

vs.

DANIEL BERRY.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

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GIDEON, Printer.

STATE OF TENNESSEE:

DANIEL BERRY, trustee, &c.,
vs.
JESSE B. CLEMENTS.

Be it remembered, that a record in said cause was filed in the clerk's office of the supreme court of errors and appeals, at Nashville, on the 2nd day of December, 1848, in the words and figures following, "to wit:"

STATE OF TENNESSEE:

Pleas at the court-house in the town of Nashville, county of Davidson, and State of Tennessee, on the second Monday, being the 11th day of September, in the year of our Lord one thousand eight hundred and forty-eight, and in the 73d year of American independence.

Present, the honorable Thomas Manny, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the courts of the 6th judicial circuit of said State.

DANIEL BERRY, trustee, &c.,
vs.
JESSE B. CLEMENTS.

State of Tennessee, to the Sheriff of Davidson county, greeting:

You are hereby commanded to summons Jessee B. Clemmons, marshal, if to be found in your county, to be and appear before the judge of our 6th circuit, at the next circuit court, to be held for the county of Davidson, at the court-house in the town of Nashville, on the second Monday in May next, then and there to answer Daniel Barry, trustee, wherefore he detains the goods, the property of the said Daniel Berry, trustee, mentioned in exhibit A, in the affidavit in this cause, to his damage twenty-five hundred and forty-nine $\frac{11}{100}$ dollars. Herein fail not, and have then and there this writ.

Witness Thomas T. Smilley, clerk of our said court, at office, the second Monday January, A. D. 1848, and in the 72nd year of American independence.

THOS. T. SMILLEY.

I acknowledge myself the above plaintiff's security, in the sum of five hundred dollars, for prosecuting the above writ with effect or payment of all cost or damages to defendant on failure thereof.

Witness my hand and seal, the 25th of March, A. D. 1848.

[L. S.] Issued 25th March, 1848. Came to hand and executed 4th April, 1848.

CHL. LANIER, *Shf.*

Know all men by these presents, that we, Daniel Berry and A. D. Berry, are, and by these presents acknowledge ourselves to be, indebted to Jessee B. Clements, marshal of Middle Tennessee district, in the penal sum of five thousand and ninety-eight $\frac{23}{100}$ dollars; for the payment of which we hereby bind ourselves, and each of us, our and each of our heirs, executors, and administrators.

Witness our hands and seals, the 23d day of March, 1848.

The condition of this obligation is such, that whereas the said Daniel Berry, trustee, has this day sued out a writ of replevin from the office of the clerk of Davidson county circuit court, commending the sheriff of said county to take from the possession of said Clements, and deliver to said Berry, certain dry goods mentioned in schedule "A," filed in said office as part of the affidavit, valued by the clerk of said court at $2,549 11. Now, if the said Daniel Berry shall abide by, and perform, the judgment of the court in the premises, then this obligation to be void, otherwise to remain in full force and virtue.

DANIEL BERRY, [L. S.]
A. D. BERRY. [L. S.]

In the clerk's office of the circuit court.

STATE OF TENNESSEE, *Davidson county:*

Daniel Berry, trustee, &c., made oath that Jessee B. Clements has seized and taken into his possession certain dry goods mentioned in schedule "A" hereunto annexed, and made part of this affidavit, the said goods being in the possession of affiant until they were taken into possession by the said Clements. Affiant states, that, according to his information and belief, that he is entitled to the possession of said goods or property, and that the same are not subject to seizure as aforesaid. Wherefore he proposes to replevy the same according to the act of assembly in such cases made and provided.

DANIEL BERRY, *Trustee.*

Sworn to and subscribed before me.

THOMAS T. SMILLEY,
By PHENIAS GARRETT, *D. C.*

March 25, 1848.

Circuit court, May term, 1848.

STATE OF TENNESSEE, *Davidson county:*

Daniel Berry, trustee, by attorney, complains of Jessee B. Clements, marshal, who has been summoned to answer, &c., wherefor he detains the goods, the property of the said Daniel Berry, trustee, mentioned in exhibit "A" in the affidavit in the cause, to his damage twenty-five hundred and forty-nine $\frac{11}{100}$ dollars. For that whereas the said defendant, on the day of March, 1848, in the county aforesaid, entered into a certain storehouse on the public square in the city of Nashville, then occupied by the said plaintiff as a store, and took there-

from the goods and chattels mentioned and described in the exhibit "A," mentioned in this writ, and which is made a part of this declaration, which were the goods and chattels of the said plaintiff, of great value, to wit, of the value of twenty-five hundred and forty-nine $\frac{11}{100}$ dollars, and detains the same from said plaintiffs; saith that he is injured and has sustained damages by reason thereof to the amt. of $2,549.11. And therefore he sues, &c.

EWING & WHITWORTH, *Attorneys.*

DANIEL BERRY
vs.
J. B. CLEMENTS.

Replevin.—Circuit court, Davidson county.

In this case the defendant comes and defends the wrong and injury, when, &c., and says he is not guilty in manner and form as the plaintiff in declaration hath alleged, and of this he puts himself on the country, and the plaintiff also; and the following facts are agreed upon between the parties: On the 20th of January, 1848, William H. Inskeep, Albert Moulton, Edward D. Woodruff, and John Sibly, citizens of the State of Pennsylvania, trading in partnership under the firm Inskeep, Moulton & Woodruff, brought an action of debt against Charles F. Berry, a citizen of the State of Tennessee, and resident of Nashville, in the circuit court of the United States, for the district of Middle Tennessee, upon several notes of hand executed by said Berry, payable to said Inskeep, Moulton & Woodruff; the writ and copy of the declaration was served by the marshal upon the said Charles F. Berry on the 20th January, 1848. The writ was returned to the court with the declaration at March term, 1848, and the following entries *was* made on the rule docket, and minutes, as by the copy hereunto annexed, and made part of the case agreed, marked "A," Inskeep, Moulton & Woodruff, debt, 20th January, 1848, executed and delivered defendant a copy of declaration. Declaration filed March 1st, 1848; ruled for plea by 8th March; no plea being filed by attorney, takes judgment by default. Circuit court of United States, Middle Tennessee district. Thursday, March 9th, 1848, court adjourned until to-morrow morning 10 o'clock. Friday, March 10th, 1848, court met according to adjournment, William H. Inskeep, Albert Moulton, Edward W. Woodruff, and John Sibley, trading under the firm of Inskeep, Moulton & Woodruff, Charles F. Berry. The plaintiffs appear by their attorney, and a judgment by default having been taken in this cause on the 8th of March, 1848, and no motion having been made to have the same set aside, it is therefore considered by the court that said judgment by default be affirmed, and that the plaintiffs recover against said defendant thirteen hundred and sixteen dollars [and] sixty-eight cents, their balance of debt in the declaration mentioned, and the further sum of forty-four dollars and twenty-two cents, their damage sustained by reason of the detention thereof, and their cost in this behalf expended,

and that execution issue. Session of court commenced on the 6th March, 1848. A true copy. J. McGavock, clk., by G. M. Fogg, deputy. Berry's deed received at register's office 51 minutes after 9, on the 10th March. Inskeep & Co. Judgment obtained about half-past ten o'clock same day.

The said circuit court of the United States commenced its session on Monday, the 6th day of March, 1848. On the 10th day of March, 1848, Charles F. Berry, the debtor, executed a deed of trust to the plaintiff in this cause, a copy of which is hereunto annexed and made a part of this case agreed.

"Know all men by these presents, that I, Charles F. Berry, of the county [of] Davidson, and State of Tennessee, of the one part, and Daniel Barry, of the county and State aforesaid, of the other part, witnesseth, that I, the said Charles F. Berry, for [and] in consideration of the sum of five dollars, to me in hand paid by the said Daniel Berry, and the other consideration hereinafter mentioned, hath this day bargained, sold, transferred, and conveyed, and do by these presents bargain, sell, transfer, and convey, to the said Daniel Berry all my stock of dry goods of every description, and all sorts of ware now in the storehouse occupied by me on the public square in Nashville, and also in a storeroom occupied by me in Nashville, amounting together to the sum of about twelve thousand dollars, as pr. invoice book made out this day; three horses, one negro man slave, named Abraham, one buggy, all my accounts of every description, and the book containing the same; all the notes, &c., that are due me, and also my interest, whatever it may be, in the unsettled business of the firm of A. D. & C. F. Berry; also, all the interest I have in and to the following described lots or pieces of ground, viz., lots No. 5 and 6, as described in a plat made by C. W. Nance, of lots adjacent to the town of Nashville, on Cherry street, fronting thirty feet each on Cherry, and also lots A and B, in No. 20, in the plan of South Nashville, and lots No. 3 and 4 adjoining F. B. Fogg's lot on Cherry st. To have and to hold said property, of every description, to the said Daniel Berry, his heirs, and representatives, forever. I, the said Charles F. Berry, bind myself, my heirs and representatives, to warrant and defend the title to the same or any part thereof, to the said Daniel Berry, his heirs and assigns, against the lawful claims of all persons whomsoever. But this deed is made for the following use and trust, and for no other purpose—that is to say, that the said Daniel Berry and A. D. Berry are my accommodation endorsers on the notes, most of them, embraced in schedule "A," and whereas I am anxious to secure them, and also the payment of all the claims therein specified, to the persons to whom said claims are due, and also to secure the claims specified in the schedule "B" to the person therein named, which schedule *are* to be *requistered* with this deed. Now, if I, the said Charles F. Berry, shall well and truly pay off and satisfy said debts mentioned [in] schedule "A and B" on or before the first day of December, 1849, then this deed to be void; but if I shall fail to do so, then the said Daniel Berry shall sell whatever remains of said property upon such terms as will be most for the

interest of the creditors, and apply the proceeds to the payment—first, of the debts mentioned in schedule "A," until they are all paid and satisfied; and, secondly, to the payment of the debts mentioned in schedule "B," if there shall be enough after paying the expenses of executing this trust; if not, to make a pro rata distribution of the proceeds amongst them. In order to make it more certain that said debts shall be paid within the time specified, I hereby authorize the said Daniel Berry, as trustee, to take immediate possession of all the above described property, and that he proceed to sell the same upon such terms as will make it yield the most money; and that he take possession of all my books of accounts, notes, &c., and proceed to collect the debts due me as speedily as he can, and to apply the proceeds of the goods and property, and the money collected by him, to the payment of the debts in the order above specified; but that he shall not be forced to make a general sale of said property, goods, &c., until the expiration of said time.

In testimony whereof I, the said Charles F. Berry, have hereunto set my hand and seal, this the 10th day of March, 1848.

C. F. BERRY. [SEAL.]

STATE OF TENNESSEE, *Davidson county*.

Personally appeared before me, Robert B. Castleman, clerk of the county court of said county, the within named C. F. Berry, the bargainer, with whom I am personally acquainted, and who acknowledges that he executed the within deed of trust for the purposes therein contained.

Witness my hand at office, this 10th day of March, 1848.

R. B. CASTLEMAN.

STATE OF TENNESSEE, *Davidson county*.

REGISTER'S OFFICE, *March 11th*, 1848.

I, William James, register of said county, do hereby certify, that the foregoing deed of trust and certificate are duly registered in my office, book No. 10, pages 574, 575, and that they *was* received March the 10th, 1848, 9 $\frac{4}{60}$ o'clock, a. m., and entered in Note book 2, page 20.

WM. JAMES.

And the same was lodged for registration in the register's office, at the time mentioned in the memorandum upon said deed, on the 20th March, 1848; an execution, being a writ of fieri facias, issued upon said judgment, and came to the hands of the marshal on the 21st of March, and by him, on the 24th of March, was levied upon the goods, wares, and merchandise particularly specified in the levy, a copy of which is hereunto annexed marked "C," together with the return of the marshal.

The President of the United States, to the marshal of the middle district of Tennessee, greeting.

You are hereby commanded, that of the goods and chattels, lands and tenements, of Charles F. Berry, in your district, you cause to be

made thirteen hundred and seventy-nine $\frac{89}{100}$ dollars, which William H. Inskeep, Albert Moulton, Edward W. Woodruff, and John Sibley, trading under the firm of Inskeep, Moulton, and Woodruff, in the circuit court of the United States for the 8th circuit, in the middle district of Tennessee, recovered against him for balance of debt, damages and cost, in a certain action of debt in the said court, lately determined, wherein the said Inskeep, Moulton and Woodruff were plaintiffs, and said Charles F. Berry was defendant, whereof said defendant is convicted, as appears of record, and have the said money ready to render before the judge of our said court at Nashville, on the 1st Monday in September next; herein fail not, and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 1st Monday in March, A. D. 1848, and in the 72d year of our independence.

JACOB McGAVOCK, *Clerk*.

Issued March 20th, 1848; came to hand 21st March, 1848; levied this fi. fa. upon the following goods, wares, and merchandise, as the property of Charles F. Berry, this 24th day of March, 1848. Then follows a long list of goods of several pages, specifying each article, item by item, amounting in all to the sum of twenty-five hundred and forty-nine $\frac{11}{100}$ dollars; the prices annexed to the foregoing list of goods were the invoice prices as furnished by the defendant, but the defendant and myself not agreeing as to the present value of the goods, we called in the following persons, merchants of Nashville, to wit, John B. Johnston, C. Connor, B. F. Shields, and A. J. Duncan, who valued the goods to be worth fourteen hundred and two dollars, or 55 cents in the dollar, upon the invoice prices.

J. B. CLEMENTS,
Marshal of the U. S. district of middle Tennessee.

The sale of said goods, wares, and merchandise was stopped by a writ of replevin, from the circuit court of Davidson county, sued out at the instance of Daniel Berry, against me, as marshal; which writ was executed upon me, by the sheriff of Davidson county, on the fourth day of April, 1848, and the goods delivered up to said Daniel Berry, by the advice and consent of the plaintiff's attorneys. September 4th, 1848.

J. B. CLEMENTS, *M. M. D. T.*

A true copy. J. McGAVOCK, *Clerk*.

Marshal's fees, commissions on the amount of this execution, by G. M. Fogg, deputy, say on $1,360 90, *a* 2½ pr. ct., - - $34 02
Serving this fi. fa., - - - - - - - - - 2 00

$36 02

These goods *was* in the store of Charles F. Berry, and had not been removed therefrom, but Daniel Berry, the trustee, was at the store at

the time of the levy, and stated that the said Charles F. was his agent, and the trustee claimed the goods as included in the deed of trust; the goods levied upon *was* taken possession of by the marshal, and after the writ of replevin was served, they were delivered up by the marshal to Daniel Berry; the goods, wares, and merchandise levied upon were, before the execution of the deed of trust aforesaid, the property of said Charles F. Berry; if, upon the above fact the law is with the plaintiff, then judgment is to be rendered for him with costs; if for the defendant, the marshal, then judgment is to be rendered for him against the plaintiff and his security, for the amount of the judgment in the federal court; interest and cost as taxed by the federal court.

F. B. FOGG, *for Defendant.*
EWING & WHITWORTH,
Attorneys for plaintiffs.

And the court being of opinion that the law is with the defendant, it is therefore considered by the court that the defendant recover of the plaintiff, Daniel Barrey and Augustus D. Berry, his security in the replevin bond, the sum of thirteen hundred and sixty dollars and ninety cents, and the sum of forty-seven dollars 62 cents interest on said judgment, from the 10th day of March, 1848, the day of the rendition of the judgment in the federal [court;] and the sum of eighteen dollars and 95 cents cost of suit in federal court; making together the sum of fourteen hundred and twenty-seven dollars 47 cents, together with his cost in this behalf expended, and that he has his execution; and thereupon the plaintiff, by his attorney, prays an appeal in the nature of a writ of error, to the next supreme court of errors and appeals, to be holden at Nashville, on the 1st Monday in December next, which is granted, bond and security being given according to law.

Know all men by these presents, that we, Daniel Berry, trustee of Charles F. Berry, are held and firmly bound unto Jesse B. Clements, or his certain attorney, executors, administrator, or assigns, in the penal sum of twenty-eight hundred and fifty-four dollars and 94 cents, for the true payment whereof we bind ourselves, our heirs, executors, and administrators, firmly, by these [presents.] Sealed with our seals, and dated this 13th day of October, 1848.

The condition of the above obligation is such, that whereas the above bound Daniel Berry, trustee, hath prayed and obtained an appeal, in the nature of a writ of error, from the circuit court of Davidson county, to the supreme court of errors and appeals, at Nashville, in the State of Tennessee, on a judgment of said circuit court, recovered at the present term thereof by the said Jesse B. Clements, against the said Daniel Berry, for fourteen hundred and twenty-seven dollars and forty-seven cents. Now, if the said Daniel Berry shall well and truly prosecute his said appeal with effect, or in case he fails therein, pay and satisfy the whole debt, damages, and cost which may be awarded against him for wrongfully prosecuting said appeal, and satisfy the judg-

ment of said supreme court therein, then the above obligation to be void, else to remain in full force and effect.

DANIEL BERRY, [SEAL.]
By A. EWING, *Attorney*.
ANDREW EWING, *Security*. [SEAL.]

	State tax - - - -		$3 50
Clerk Smilley—	Writ and bond - -	$1 15	
	Bond and affidavit - -	56	
	Judgment final - -	75	
	Judgment for cost - -	25	
	Order and bill of cost -	50	
	Order for fi. fa. - -	25	
	Appeal bond, &c. - -	1 25	
	Enrolling agreement -	2 00	
	Transcript, &c. - -	3 62	
			10 33
Sheriff Lanier—	Serving process - - -		1 00
			$14 83

Judgment, 14th October, 1848, for $1,427 47.

STATE OF TENNESSEE.

I, Thomas T. Smilley, clerk of the circuit court of the county of Davidson, and State aforesaid, do certify, that the foregoing is a correct transcript of the records and proceedings had in said court, in the cause heretofore prosecuted and determined therein, between Daniel Berry, trustee and plaintiff, and Jessee B. Clements, marshal, &c., defendant, as the same remains of record in said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at [my] office, in Nashville, the 28th day of November, in the year of our Lord one thousand eight hundred and forty-eight, and in the 73d year of American independence.

THOMAS T. SMILLEY.

STATE OF TENNESSEE.

And now, at a supreme court of errors and appeals, began and held at the court-house in the town of Nashville, on the first Monday in December, A. D. 1848; present, Judges Green, Turley, and McKinney, the following proceedings were had, to wit:

DANIEL BERRY, trustee, plft.
vs. } In error.
JESSEE B. CLEMENTS, deft.

This day came the parties aforesaid, by their attorneys; whereupon, as well the record and proceedings aforesaid, as the matters for error assigned by the said Daniel Berry, trustee, being seen and by the court here fully understood; for that it seems to the court, that in the record and proceedings aforesaid, as well as in rendering the judgment afore-

said, there is error in the agreed case. It is therefore considered by the court, that the judgment rendered in this cause by the court below be reversed, annulled, and for nothing held. And this court now proceeding to give such judgment on the agreed case as the circuit court should have rendered: It is therefore considered by the court, the law arising upon the facts agreed being for the plaintiff, that the plaintiff, Daniel Berry, trustee, recover from Jesse B. Clements, the defendant, the costs of this cause in this court, and in the court below, and that execution issue to collect the same.

And afterwards, to wit, at the adjourned term of said court, in May, 1849, present the same judges, the following further proceedings were had in said cause, to wit:

JESSE B. CLEMENTS, plft.
vs. } In error.
DANIEL BERRY, deft.

From the judgment in this cause the plaintiff in error prays for a writ of error to the Supreme Court of the United States, to be held at Washington, on the first Monday in December next, and having produced a writ of error, and given bond and security, which have been allowed according to the acts of Congress, and also lodged a copy of said writ of error and the original citation, a copy of which has been acknowledged to be received by the attorneys for Daniel Berry: It is ordered that the original writ of error and citation, together with a copy of the records in this cause, be made out by the clerk of this court and transmitted to the Supreme Court of the United States at Washington.

STATE OF TENNESSEE.

I, James P. Clark, clerk of the supreme court of errors and appeals for the State aforesaid, at Nashville, do hereby certify, that the foregoing is a true, full, and perfect transcript of the records and proceedings had in the agreed case of Daniel Berry, trustee, vs. Jesse B. Clements, as the same now remains on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at [my] office in Nashville, this [SEAL.] the 27th day of July, A. D. 1849, and the 74th year of American independence.

JAMES P. CLARK, *Clerk*,
By BEN. P. CLARK, *Deputy Clerk*.

THE UNITED STATES, *ss*.

[SEAL.] The President of the United States, to the judges of the supreme court of the State of Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which [is] in the said supreme court, before you or some of you, between Daniel Berry, plaintiff, and Jesse B. Clements, defendant, a manifest error hath happened to the great damage of the

said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, *by* the said Supreme Court may cause further to [be] done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the 74th. JACOB McGAVOCH,

Clerk of the circuit court for the district of Middle Tenn.

Filed 29th January, 1849.

J. P. CLARK, *Clerk.*

The United States of America, to Daniel Berry, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the office of the supreme court of the State of Tennessee, at Nashville, wherein Jesse B. Clements is plaintiff in error, and you are defendant, to shew cause, if any there be, why the judgment rendered against the said Jesse B. Clements, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert J. McKinney, this 29th day of January, A. D. 1849. ROBT. J. McKINNEY,

One of the judges supreme court of Tennessee.

DAVIDSON COUNTY, *ss.*

On this day of , in the year of our Lord one thousand eight hundred and twenty , personally appeared before me, , and being duly sworn, deposeth and saith, that on the day of he delivered a true copy of the above citation to .

I acknowledge service of the above, this 27th July, 1849.

EWINGS & WHITWORTH,
Attorneys for plaintiff.

BERRY vs. CLEMENTS.

This is an action of replevin, commenced in the circuit court of Davidson county. The facts of the case were agreed upon in the court below, and are as follows, viz:

At the March term, 1848, of the federal court for the district of Middle Tennessee, which commenced its session on the first Monday, being the 6th day of said month, a judgment was recovered against Charles F. Berry, in favor of Inskeep, Moulton and Woodruff, for the sum of $1,316 68 debt, exclusive of damages and cost. It appears, from the record of the cause, that on the 3d day of the term, being 8th day of March, a judgment by default was taken against said defendant for failing to plead, according to a rule given by the plaintiffs; the only entry of said judgment is in the following words: "No plea being filed, plaintiffs, by attorney, take judgment by default;" but no judgment was in fact entered. The following additional entries from the record of the cause are also incorporated into the statement of facts agreed upon, viz: "Thursday, March 9th, court adjourned until to-morrow morning, 10 o'clock." "Friday, March 10, court met according to adjournment; the plaintiffs appear, by their attorneys, and a judgment by default having been taken in this cause, on the 8th March, 1848, and no motion having been made to have the same set aside, it is therefore considered by the court that said judgment by default be affirmed, and that the plaintiffs recover against said defendant thirteen hundred and sixteen dollars and sixty-eight cents, their balance of debt in the declaration mentioned, and the further sum of forty-four dollars and twenty cents, their damages sustained by reason of the detention thereof, and their cost in this behalf expended, and that execution issue." It further appears that, on the day said judgment was rendered, to wit, 10th March, 1848, the defendant therein, Charles F. Berry, made a deed of trust, conveying certain real and personal property, situated in Nashville, and including his stock of goods, debts, accounts, &c., to the plaintiff in this action, Daniel Berry, in trust to indemnify his accommodation endorsers, and also to secure certain preferred creditors, not including the plaintiff in said judgment; the trustee is empowered to take immediate possession of the property, and to sell the same upon such terms as will make it yield the best price; also, to collect the debts, and apply the proceeds in payment of the debts in the order specified in the schedules attached to the deeds, said deed was duly acknowledged and deposited with the register of Davidson county, where both the bargainer and trustee resided, on the day of the date, at 51 minutes past 9 o'clock, a. m., as appears from the register's certificate thereon, and as is also admitted by the parties. And it is further admitted and agreed, by the parties upon the record, that the judgment above mentioned was not rendered until about half past ten o'clock, a. m., of the same day. It is further agreed, that, on the 20th of March, 1848, an execution was issued upon said judgment, and delivered to the defendant, Clements, who is the marshal of said district, and was by him levied upon the stock of goods conveyed in said deed of trust, which were valued at $1,402; and thereupon this action was instituted, and the goods replevied, pursuant to the act of 1846, chapter 65. The parties agreed, that if, upon the foregoing facts, the law was with the plaintiff, judgment should be rendered for him; if otherwise, then for the defendant; the

circuit judge declared the law to be in favor of the defendant, and the plaintiff appealed in error to this court.

The question presented for adjudication is, whether the lien of said execution, or that of the deed of trust first attached upon the goods in question. The counsel for the defendant insists upon the priority of the lien of the execution upon the principle of the common law, that an execution binds the personal property of the judgment debtor from its teste, which, if awarded in term time, is the first day of the term at which the judgment was rendered. The general terms in which this legal proposition is asserted in some of the books, seems to have led to some confusions and misapplication of what we understand to be the correct principle. It is admitted that the judgment itself, upon which the execution in this cause issued, could not be held to relate so as to form a lien upon the real estate of the debtor, at least as against a bona fide purchaser, for a valuable consideration, beyond the true time of its rendition; and this leads to the inquiry whether, as against such a purchaser, the lien of the execution upon the personal property of the debtor can be held to relate to an earlier or different period from that of a judgment; in other words, can it relate to a time anterior to the real or supposed existence of the judgment. The idea of an execution without a judgment to support it, in which it issues and from which it derives its existence, cannot in law be conceived of, it will be manifest, we think, from a careful examination, that in England, before the statute 29, Charles 2, chapter 3, the lien of the judgment, as to the real estate, and the lien of the execution, as to the personal, were co-equal and co-existent; and this is so because the judgment, as the principal, draws after it, as an incident, the execution with all its consequences, the lien among others; both liens related either to the true or supposed time of the signing of the judgment, and the relation of the execution was solely in consequence and by force of the relation of the judgment, not independently of it. Before the statutes 29, Charles the 2d, the relation of both judgment and execution, if the latter bore teste of the term in which the judgment was rendered, was to the first day of that term, because, by fiction of law, the judgment was taken to have been rendered on that day. This doctrine of relation to the first day of the term had its origin in another legal fiction, namely, that the whole term was, in consideration of law, but one day, and that the day on which the term commenced; hence, although in truth the term consisted of several days or weeks, yet all judgments and other proceedings had relation to the first day, and by intendment of law were entered on that day, unless, from on the face of the record itself, it appeared that they had been entered of a later day. But it was a maxim of the common law that fictions, which were intended for the advancement of justice, never shall extend to work an injury. 3 Bl. Com., 43. Whenever, therefore, a fiction would work injustice, because of its being inconsistent with the truth, a court of law ought to look to the real facts. 3 B. C., 317; 3d decree, 516; 2 Burr, 962. This fiction of relation might therefore be repealed, whenever necessary to the attainment of justice,

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by showing the true time of signing judgment, provided this could be made appear from any entry or memorandum on the record. In 3 Salk., 212, it is said a judgment should have relation to the first day of the term, as if it was given on that very day, unless there is a memorandum to the contrary, as when there is a continuance of the cause until another day in the term. And in 2 Field., 840, it is laid down that the judgment, by general intendment of law, has relation to the first day of the term whereof it is entered, unless any thing appears on the record showing that it cannot have that relation. See, also, 3d Burr, 1595. So, also, a memorandum upon this record, showing that the declaration in the cause was not filed until some day in the term, will have the same effect. Bull, N. P. 137; 3 Burr, 1241; 1st Term R., 116. Again, it is laid down, that, although the law does not in general regard a fiction of a day, yet a day is always considered to be desirable for the purpose of justice. 2 Stark. Ev., (e. v.,) 787, (edition of 1837;) 7 Com. Dig., 398; 2 B. & A., 586. And in Coke Litt., 185, B, it is said that, in consideration of law, there is priority of time in an instant, and it may be divided into two parts, (see note t, p. 789, Stark's Ev. above cited,) but the law will not permit it to be carried out in three. Fitzwilliams' case, 6 Co., 33. From the foregoing authority, it is clear that, whenever the true time of signing judgment could be ascertained from any thing upon the record, the fiction of relation to the first day of the term was displaced, and ceased to operate; and the relation of the judgment, in such case, was only to the true time of its rendition; and the fact as to time, when relevant and susceptible of being established by record evidence, might be averred and proved whenever necessary to prevent injustice, or to protect the rights of strangers to the judgment; but, from the absolute variety imputed to a record by the common law, it was not admissible, by any inferior grade of evidence, to inquire or prove the time of signing judgment, in contradiction of the legal fiction, that it was signed on the first day of the term, that being by intendment of the law the date of the judgment.

This difficulty was obviated by the statute 29, ch. 2, which requires that the day of the month and year upon which judgment is signed shall be entered upon the margin of the record when the judgment is recorded; and that as to real property such judgment shall relate, as against bona fide purchasers for valuable consideration only to the time of signing; Com. Dig., vol. 4, p. 237; and by this statute it was further enacted, that execution should only bind personal property from the time the writ was delivered to the sheriff, who was required to endorse thereon the day of receiving the same. Yet it is held that, as against the defendant, though not as to a bona fide purchaser or stranger, the goods are bound from the teste of the writ, as before the statutes; Id. p. 238, Skin. 257, 2 Mad. 310. And since this statute, the relation of judgments and executions, except as against purchasers and strangers, is to the first day of the term at which the judgment was rendered, or the teste of the writ as that common law. But it has been held

that the statutes of 29, ch. 2, is not in force in this State, and the decision has been too long acquiesced in to be now questioned. It remains, therefore, to inquire, what change of the common law upon this subject has been introduced in this State by legislative enactment, a long established practice in our courts. The act of 1809, ch. 49, sec. 20, requires "that the minutes of the respective courts within this State, for each preceding day of the session, shall be read in open court on the morning of the succeeding day," and by practice, coeval with the act, and founded perhaps upon its proper construction, the record of each day's proceedings is signed by the presiding judge or judges, and, in addition, this record of each day shows the precise time to which the court is adjourned on the succeeding day. Furthermore, by the act of 1803, ch. 6, sec. 2, it is made the duty of the clerk "to endorse upon the writ of execution the day and year the judgment was rendered, by virtue of which said execution issued." And by the act of 1794, ch. 1, sec. 9, the sheriff, or other officer, is requested to "make on each process the day on which he shall have received it." It is not our purpose in citing these various enactments, to show they were designed by the legislature to effectuate all the object of the 29, Ch. 2, above referred to; for this would be to come in conflict with the settled rule in the State in relation to the lien of executions upon personal property; but that they fully attain what may perhaps be regarded as the most important object of that statute, namely, that the time of signing judgment should be entered upon the record.

Under our practice, the proceedings of the term are contrary to the practice of the common law, separated and distinguished by the division of days; the record shows the day on which the judgment is rendered; and the date thereof is endorsed upon the execution, to the end, perhaps, that the officer charged with the execution of the process might be enabled more easily to discriminate between such alienations of property by the debtor as were valid and void as against the judgment an execution creditor. Inasmuch, therefore, as under our law the precise day on which judgment is rendered is fixed and ascertained by the record, it necessarily follows, upon common law principles, that it cannot relate beyond that day, as against bona fide purchasers for valuable consideration; nor can the execution issued thereon, if tested, of the same terms as the judgment, as against such purchasers, relate beyond the date of the judgment, and as the hour of the meeting of the court on each day of the term, under our practice, is also ascertained by record, the relation of the judgment or execution cannot extend beyond that hour; but we do not think it admissible to show, by parol evidence, the precise hour of the day in which the judgment was rendered; this would be not only to violate principles, but to establish a most dangerous and impracticable rule.

We do not intend to be understood as holding that, as between creditors, judgments do not relate to the first day of the term at which they were rendered, and executions to their teste for the attainment of justice; the fiction of relation had been held to exist in England to creditors, as

well since as before the statutes of 29, Ch. 2; and such is the settled law in this State; hence it has been settled by this court that several executions issued upon judgment rendered on different days of the same term, will, as between creditors, naturally relate to their teste; and, if it were not so, gross injustice would be done—the creditors may be equally meritorious and equally vigilant, yet, from the arbitrary order of causes upon the docket, and the course of business in the court, over all which they have no control, they cannot all obtain judgment at the same instant, nor perhaps on the same day of the term; but as they all stand in equal right, the fiction of relation was admitted to prevent the palpable injustice of our having priority, by mere accidental causes, over others equally meritorious.

Applying the foregoing principles to the fact of the case under consideration, it results, that the execution under which the defendant acted, did not, at most, relate to, nor did its lien attach upon, the goods in question at an earlier period; that the hour of meeting of the court on the day the judgment was rendered, which, we learn from the record, was 10 o'clock, a. m., and this was subsequent to the time when the lien of the deed of trust took effect, as declared by the act of 1841, ch. 12, sec. 2, which, in substance, provides, among other things, that the "register of each county shall note in a book, to be kept by him, the day and hour of the reception of all deeds, and other instruments left to be registered; and every deed, and other instrument, shall be considered as registered, and take effect at the time so noted." The deed in this case was deposited with the register at 51 minutes after 9 o'clock, a. m., of the same day. It does not, therefore, become necessary to put the decision of this case upon the agreement of the parties fixing the point of time at which the judgment was rendered. Second, the defendant's counsel further insists, that the date of the supposed judgment by default, on the 8th of March, should be regarded as the true date of the judgment in this cause; and the action being in debt, in which the judgment would have been final if not subsequently set aside. Such would, probably, have been the conclusion of law, had a formal judgment been entered up; but this was not done. The mere entry upon the record, that the "plaintiff, by attorney, take judgment by default," was wholly inoperative, it could have formed no lien, nor have authorized the issuance of an execution; neither could it impart any legal efficacy to the subsequent judgment, which stands wholly independent of it, and operates ex proprio vigore.

Upon the whole record, we are of opinion, that the law of the case is with the plaintiff. The judgment of the circuit court will, therefore, be reversed, and judgment will be entered in favor of the plaintiff.

McKINNEY.

A true copy. Attest: J. P. CLARK, *Clerk*,
By BEN. P. CLARK, *D. C.*

2528

SUPREME COURT OF THE UNITED STATES.

No. 88.

THOMAS M. LEAGUE, PLAINTFF IN ERROR,

VS.

JOHN DE YOUNG, SURVEYOR FOR THE DISTRICT OF GALVESTON, AND SAMUEL P. BROWN, DEPUTY.

IN ERROR TO THE SUPREME COURT OF TEXAS.

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THE UNITED STATES OF AMERICA,
State of Texas, to wit.

At a term of the supreme court of the State of Texas, held in and for the said State at the city of Austin therein, on the second Monday of December, A. D. one thousand eight hundred and forty-seven, present the honorable John Hemphill, chief justice, and the honorable Abner S. Lipscomb and the honorable Royal T. Wheeler, associate justices; Thomas Green, clerk; and James H. Matthews, sheriff of Travis county, and ex officio sheriff of the supreme court; among other were the following proceedings, to wit, Thomas M. League, appellant, vs. John De Young, district surveyor for the district of Galveston, and Samuel P. Browne, deputy surveyor of the same, appellees.

THE STATE OF TEXAS,
County of Galveston.

At a term of the district court, begun and holden at Galveston, within and for the county of Galveston, on the eighth day of November, A. D. one thousand eight hundred and forty-seven, before the honorable James Love, judge thereof, the following cause came on for trial, viz:

THOMAS M. LEAGUE, plaintiff,
vs.
JOHN DE YOUNG, district surveyor of the district of Galveston, and Samuel P. Brown, deputy surveyor of the same district, defendants.

Petition filed June 30, 1847

To the honorable James Love, judge of the district court for the first judicial district of the State of Texas, holding said court in and for the county of Galveston.

The petition of Thomas M. League, of the city of Galveston, in the said county of Galveston, complaining against John De Young, district surveyor of the said district, known as the district of Galveston, and against Samuel P. Browne, deputy surveyor of the said district, both of the said county, respectfully showeth unto your honors:

That heretofore, to wit, on the second day of March, A. D. 1836, the people of Texas, the territory whereof until and before that time constituted a province or department of the State of Coahuila and Texas, one of the States then composing the United Mexican States, dissolved their political connexion with the Mexican nation, and by their certain manifesto, or declaration of independence, made by their delegates thereunto duly authorized and assembled in convention, at Washington, in Texas aforesaid, declared and constituted themselves an independent republic, fully invested with all the rights and attributes belonging to independent nations. A copy of which manifesto

or declaration of independence, marked exhibit A, is herewith filed as a part hereof.

And that the people aforesaid, by their delegates, then and there in this behalf duly authorized, empowered, and assembled in convention as aforesaid, thereafterwards, to wit, on the seventeenth day of March aforesaid, did make a constitution for the government of the said republic, which constitution was, subsequently to the making thereof, and before the twenty-fifth day of October, A. D. 1836, duly approved, adopted, and ratified by the people aforesaid, and ever thereafterwards, until the annexation of Texas aforesaid to these United States of America, and its adoption and reception as a State into the Federal Union, remained and continued in full force and operation as the constitution of the Republic of Texas. A copy of which constitution, marked exhibit B, is herewith filed as a part hereof.

That, from the time of the adoption of said constitution, to the time of the annexation aforesaid, the said Republic of Texas was acknowledged and recognised by the nations of the earth and their governments, as a free, sovereign, and independent State, in which capacity she entered into treaties with other nations, and carried on diplomatic and other intercourse with their governments and citizens.

And your petitioner further shews, that certain laws, not inconsistent with the constitution aforesaid, were, and continued to be in force in Texas aforesaid, long before and at the time of the adoption of said constitution, as well as subsequently thereto, until and after the twentieth of January, A. D. 1840. Certain of which laws provided that the administration of justice in civil and criminal cases, should exclusively belong to the tribunals and courts of justice, which, agreeably to the constitution, should exercise the judicial power. That neither Congress nor the executive of the State could remove causes pending from an inferior to a superior court; nor could the tribunals and courts of justice themselves open those already concluded.

That every inhabitant of the State should be judged by competent tribunals and judges, established prior to the act by which he is judged, and in no way by special commission or retroactive laws; that the law should regulate the order and formalities to be observed in suits at law; that those should be uniform in all the courts of justice and tribunals, and that no authority could dispense therewith.

And your petitioner further shews, that the people of Texas aforesaid, by their delegates in general convention, or consultation, assembled at San Felipe de Austin, in Texas aforesaid, on the 7th day of November, A. D. 1835, The people aforesaid then being at war with Mexico, made and promulgated their certain other declaration or manifesto, setting forth to the world the causes that impelled them to take up arms, and the objects for which they fought, a copy of which declaration or manifesto, marked exhibit C, and entitled "declaration of the people of Texas in general convention assembled." is herewith filed as a part hereof; and that thereafterwards, to wit, on the thirteenth day of November, A. D. 1835, the said people in like manner, by their delegates in said convention, being and continuing assembled, made,

adopted, and established, a certain ordinance for the purpose of creating and regulating, and thereby did in fact create and regulate a provisional government for Texas aforesaid, a copy of which ordinance marked exhibit D, is herewith filed as a part hereof.

And your petitioner further shews, that all persons and families residing in Texas on the second of May, A. D. 1835, who had immigrated thereto, previously to that time, for the purpose of settling in the country, and who had not received lands according to the colonization laws previously thereto in force in Texas aforesaid, were by virtue of a certain law of the Congress of the State of Coahuila and Texas, on colonization, passed on the second day of May, A. D. 1835, the same being known as decree No. 309, declared to be entitled, and thereby, as well as by other laws, were entitled to the portions designated by the law of the 24th March, 1825, provided they possessed the qualifications therein described; a copy of which last mentioned decree, marked exhibit E, and a copy of the said law of the 24th March, 1825, marked exhibit F; the said law being a law of that date, passed by the Congress of the said State, and styled decree No. 16; and also a copy of the instructions to commissioners of the 4th of September, 1827, marked exhibit G, the same being referred to in said decree, No. 309, are herewith filed as part hereof.

And your petitioner further shews and claims, that the people of Texas aforesaid, in their corporate national capacity, and in any and every form of political organization adopted by them as an independent republic or State, after their secession from the Mexican confederacy in the year 1835 aforesaid, were, by reason of the premises herein before set forth, bound to observe and fulfil the promises, obligations, contracts, and regulations expressed in said manifestoes or declarations, ordinances, decrees, laws, and instructions, or implied thereby, or arising therefrom; and in pursuance and consideration thereof, did contract and promise to concede, grant, and perfect to all persons then residing in the country, or therein residing at the date of the declaration of independence aforesaid, to wit, on the second of March, A. D. 1836, all such rights, titles, and claims to land constituting the public domain of Texas, or any portion thereof, as by virtue of the above stated manifestoes or declarations, ordinances, decrees, laws, and instructions, or any of them, or by virtue of the constitution of the republic aforesaid, such persons were respectively entitled to.

And your petitioner further shews, that a great number of persons, so entitled as aforesaid, were residing in Texas aforesaid, on the day of the declaration of independence aforesaid, many of whom had immigrated to the country long before that time; that in and by the promises and contracts, and especially by the declaration aforesaid, made and published as aforesaid on the 7th day of November, A. D. 1835, the copy whereof herewith filed is marked exhibit G; and by the ordinance aforesaid, made and published as aforesaid, adopted on the 13th day of November, A. D. 1835, to establish a provisional government in Texas, and by the constitution of the Republic of Texas aforesaid, the people aforesaid, in their corporate political capacity, did,

or declaration of independence, marked exhibit A, is herewith filed as a part hereof.

And that the people aforesaid, by their delegates, then and there in this behalf duly authorized, empowered, and assembled in convention as aforesaid, thereafterwards, to wit, on the seventeenth day of March aforesaid, did make a constitution for the government of the said republic, which constitution was, subsequently to the making thereof, and before the twenty-fifth day of October, A. D. 1836, duly approved, adopted, and ratified by the people aforesaid, and ever thereafterwards, until the annexation of Texas aforesaid to these United States of America, and its adoption and reception as a State into the Federal Union, remained and continued in full force and operation as the constitution of the Republic of Texas. A copy of which constitution, marked exhibit B, is herewith filed as a part hereof.

That, from the time of the adoption of said constitution, to the time of the annexation aforesaid, the said Republic of Texas was acknowledged and recognised by the nations of the earth and their governments, as a free, sovereign, and independent State, in which capacity she entered into treaties with other nations, and carried on diplomatic and other intercourse with their governments and citizens.

And your petitioner further shews, that certain laws, not inconsistent with the constitution aforesaid, were, and continued to be in force in Texas aforesaid, long before and at the time of the adoption of said constitution, as well as subsequently thereto, until and after the twentieth of January, A. D. 1840. Certain of which laws provided that the administration of justice in civil and criminal cases, should exclusively belong to the tribunals and courts of justice, which, agreeably to the constitution, should exercise the judicial power. That neither Congress nor the executive of the State could remove causes pending from an inferior to a superior court; nor could the tribunals and courts of justice themselves open those already concluded.

That every inhabitant of the State should be judged by competent tribunals and judges, established prior to the act by which he is judged, and in no way by special commission or retroactive laws; that the law should regulate the order and formalities to be observed in suits at law; that those should be uniform in all the courts of justice and tribunals, and that no authority could dispense therewith.

And your petitioner further shews, that the people of Texas aforesaid, by their delegates in general convention, or consultation, assembled at San Felipe de Austin, in Texas aforesaid, on the 7th day of November, A. D. 1835. The people aforesaid then being at war with Mexico, made and promulgated their certain other declaration or manifesto, setting forth to the world the causes that impelled them to take up arms, and the objects for which they fought, a copy of which declaration or manifesto, marked exhibit C, and entitled "declaration of the people of Texas in general convention assembled." is herewith filed as a part hereof; and that thereafterwards, to wit, on the thirteenth day of November, A. D. 1835, the said people in like manner, by their delegates in said convention, being and continuing assembled, made,

adopted, and established, a certain ordinance for the purpose of creating and regulating, and thereby did in fact create and regulate a provisional government for Texas aforesaid, a copy of which ordinance marked exhibit D, is herewith filed as a part hereof.

And your petitioner further shews, that all persons and families residing in Texas on the second of May, A. D. 1835, who had immigrated thereto, previously to that time, for the purpose of settling in the country, and who had not received lands according to the colonization laws previously thereto in force in Texas aforesaid, were by virtue of a certain law of the Congress of the State of Coahuila and Texas, on colonization, passed on the second day of May, A. D. 1835, the same being known as decree No. 309, declared to be entitled, and thereby, as well as by other laws, were entitled to the portions designated by the law of the 24th March, 1825, provided they possessed the qualifications therein described; a copy of which last mentioned decree, marked exhibit E, and a copy of the said law of the 24th March, 1825, marked exhibit F; the said law being a law of that date, passed by the Congress of the said State, and styled decree No. 16; and also a copy of the instructions to commissioners of the 4th of September, 1827, marked exhibit G, the same being referred to in said decree, No. 309, are herewith filed as part hereof.

And your petitioner further shews and claims, that the people of Texas aforesaid, in their corporate national capacity, and in any and every form of political organization adopted by them as an independent republic or State, after their secession from the Mexican confederacy in the year 1835 aforesaid, were, by reason of the premises herein before set forth, bound to observe and fulfil the promises, obligations, contracts, and regulations expressed in said manifestoes or declarations, ordinances, decrees, laws, and instructions, or implied thereby, or arising therefrom; and in pursuance and consideration thereof, did contract and promise to concede, grant, and perfect to all persons then residing in the country, or therein residing at the date of the declaration of independence aforesaid, to wit, on the second of March, A. D. 1836, all such rights, titles, and claims to land constituting the public domain of Texas, or any portion thereof, as by virtue of the above stated manifestoes or declarations, ordinances, decrees, laws, and instructions, or any of them, or by virtue of the constitution of the republic aforesaid, such persons were respectively entitled to.

And your petitioner further shews, that a great number of persons, so entitled as aforesaid, were residing in Texas aforesaid, on the day of the declaration of independence aforesaid, many of whom had immigrated to the country long before that time; that in and by the promises and contracts, and especially by the declaration aforesaid, made and published as aforesaid on the 7th day of November, A. D. 1835, the copy whereof herewith filed is marked exhibit G; and by the ordinance aforesaid, made and published as aforesaid, adopted on the 13th day of November, A. D. 1835, to establish a provisional government in Texas, and by the constitution of the Republic of Texas aforesaid, the people aforesaid, in their corporate political capacity, did,

recognise and acknowledge the right of all and singular such persons to be vested and established; and did with them, and each of them, thereby promise and agree, that those who had not acquired their quantum of land should be entitled to the benefit of the laws on colonization under which they immigrated, in accordance with the laws, decrees, and ordinances above stated; and that all persons, Africans and the descendants of Africans, and Indians excepted, who were residing in Texas on the day of the declaration of independence, should be considered citizens of the republic aforesaid; and that all such citizens who had not received their portion of land in like manner as colonists, should be entitled to their land in the following proportion and manner: every head of a family should be entitled to one league and labor of land, and every single man of the age of seventeen and upwards, should be entitled to one-third part of a league of land.

And your petitioner further shews, that the people aforesaid, in further recognition and acknowledgment of the rights of the persons before herein referred to, and to provide more fully for the security and perfecting of the same, contracting and promising as aforesaid by their senators and representatives in Congress duly assembled under and by virtue of the constitution of the Republic of Texas aforesaid, did make and pass a certain act of the said Republic, entitled "An act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of a general land office," on a certain day subsequent to the date of their ratifications aforesaid of the said constitution, to wit, on the 14th day of December, A. D. 1837, a copy of which act, marked exhibit H, is herewith filed as a part hereof.

And your petitioner further shews, that the people of Texas aforesaid, in and by virtue of the last mentioned act, they therein and thereby further contracting and promising to and with the persons aforesaid and their assigns, and to and with the holders and owners of the certificates hereinafter mentioned, did, through and by their senators and representatives in Congress duly assembled, cause a board of commissioners, styled in said act a board of land commissioners, to be established for each and every county then of the said Republic, whose powers, duties, and proceedings were therein among other things defined, described, and regulated; and that they, the said people, in and by the said act, did enjoin upon the board of land commissioners for each respective county, to investigate all claims upon the government of Texas for head rights to land; and did also therein and thereby authorize and require the said board to grant to any person or persons a certificate of their claim or claims, upon such proof being made to them by the party or parties claiming as was therein required, setting forth in said certificate the amount of land the claimant was entitled to, upon what conditions, and the time when he, she, or they emigrated to the country.

And your petitioner further shews, that the people of Texas aforesaid, in and by the said last mentioned act, did, by and through their senators and representatives in Congress duly assembled, further promise, contract, and agree, to and with each and every one of the persons herein before referred to, and to and with their assigns, and to and with each

and every person who might become the lawful holder or owner of any of the certificates aforesaid, that every such certificate should be sufficient evidence to authorize any lawful surveyor to survey, for any person holding any such certificates, any lands which he might point out, agreeably to all the laws which did then or might hereafter exist on that subject.

And your petitioner further shews, that the board of land commissioners, for the county of San Augustine, duly elected, organized, and qualified, according to the provisions of the last mentioned act, on the 21st day of June, A. D. 1838, issued and granted to Colin T. McRea, in pursuance of the provisions of the said last mentioned act, and in accordance therewith, a certificate in the words and figures following, to wit:

No. 604.

REPUBLIC OF TEXAS, *county of San Augustine.*

This is to certify, that Colin T. McRea has appeared before the board of land commissioners, for the county of San Augustine, and proved, according to law, that he arrived in this Republic in the year anno domini 1834, and that he is a married man, and entitled to one league and labor of land, upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land, and two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land, which may be contained in the survey secured to him by this certificate.

Given under our hands, this 21st day of June, 1838.

CHICHESTER CHAPLIN,
President.

NATH'L HUNT,
Associate Commissioner.

And your petitioner further shows and alleges, that by virtue of sundry assignments, transfers, and conveyances in the law, the certificate of which the foregoing is a copy, together with all the rights, title, and interest therein, has become and now is the property of your petitioner, and duly vested in him; and that no location or survey of lands has ever been made upon or by virtue of the said certificate.

And your petitioner further shews and alleges, that on the thirtieth day of June, A. D. 1847, at Galveston aforesaid, he was and still is the lawful holder of the said certificate, and so holding the same, did then and there, by his agent, present the same to the said John De Young, who then was and still is district surveyor of the land district known as the district of Galveston, duly thereunto elected and qualified, in accordance with the provisions of an act of the State of Texas, entitled "An act to establish a general land office for the State of Texas," approved on the twelfth day of May, A. D. 1846, a copy whereof, marked exhibit I, is herewith filed as a part hereof; and, together with the said certificate, did then and there present to him, the said district surveyor, who then was and still is a lawful surveyor within and for the said district, a demand in writing, dated on the 29th day of June,

A. D. 1847, signed by your petitioner, a copy whereof, marked exhibit K, is herewith filed as a part hereof, therein and thereby designating and pointing out, agreeably to all the laws which then existed, and which now exist upon that subject, certain lands lying within the said district, and requesting him, the said district surveyor, to survey and cause the same to be surveyed for your petitioner, upon and by virtue of his said certificate. But the said district surveyor then and there refused, and still refuses, to make, or cause to be made, the said survey, or to take any steps whatsoever in performance of his duty resulting from said demand.

And your petitioner further shews and alleges, that on the said thirtieth day of June, after the refusal aforesaid of the said district surveyor, your petitioner presented his said certificate to Samuel P. Browne, who then was, and still is, lawful surveyor, authorized to survey the said described lands, and whose duty it was, and is, to survey the same, he being then and still a deputy surveyor of and for the said district of Galveston, duly appointed and qualified, together with a demand in writing, dated on the 29th day of June aforesaid, signed by your petitioner, a copy whereof, marked exhibit K, is herewith filed as a part hereof, therein and thereby designating and pointing out as before the same lands as aforesaid, and requesting him to survey the same for your petitioner, upon and by virtue of his said certificate; but the said deputy surveyor then and there refused, and still refuses, to make the said survey, or to take any steps whatsoever in performance of his duty resulting from such demand.

And your petitioner further shews, that by virtue of the premises he then, to wit, at the time of the said demand, was, and still is, entitled to have the survey so demanded as aforesaid made for him; of all which the said district surveyor, and deputy surveyor, were and are well knowing; and that it then was, and still is, the duty of said district surveyor, and of the said deputy surveyor, to make and cause to be made the said survey; and that your petitioner could not then, nor can he now, without such survey, by any other means lawfully proceed to obtain his title to the said lands designated and pointed out by him as aforesaid.

And your petitioner further shews, that as color for their said refusals the said district surveyor and deputy surveyor unlawfully combining and confederating together, and with certain other persons to your petitioner as yet unknown, to injure your petitioner, and wrongfully to deprive him of his just and lawful rights in the premises, pretend that the before recited act, entitled "An act *entitled an act* to reduce into one act, and to amend the several acts relating to the establishment of a general land office, is unconstitutional and void; they further pretending that the said act was vetoed by the President of the Republic of Texas, and when so vetoed was returned to the house in which it originated, with his reasons for not approving and for vetoing the same; which reasons were never spread upon the journals of the said house, before the same was reconsidered and finally acted upon by the said house; and that the vote upon the reconsideration, and final action of the

said house upon the same, was not recorded by ayes and noes; and whereas your petitioner, admitting that the said act was vetoed by the President of the Republic of Texas, and when so vetoed was returned as aforesaid, expressly charges nevertheless the contrary of each and all the other pretences above mentioned to be true; and in relation to the same alleges and shows that the said last named act was passed in the manner prescribed by the constitution of the Republic of Texas; that the same is attested and authenticated in manner and form as is prescribed by the said constitution in fact, and as appears by the printed statute laws of the said Republic, published by the authority thereof, among which the said act is published and found, to wit, since and during the year of our Lord one thousand eight hundred and thirty-eight.

And as to the said pretences your petitioner further shews and alleges, that the said district surveyor, and deputy surveyor, and each and every officer of the State of Texas, as well as the State itself, is and are barred and estopped from stating, setting up, or alleging that the said last named act is unconstitutional and void by reason of the premises, as well as because both the Republic and State of Texas aforesaid have repeatedly saved, preserved, and recognised the said last named act as a good and valid law, as well as by carrying on the land offices and land system of the country, and issuing titles to individuals and corporations ever since the time of its passage as aforesaid, in accordance with its rules and provisions, as by divers acts subsequently passed by the Congress of the said Republic of Texas, and also by the constitution and statutes of the said State of Texas; copies of which said acts, constitution, and statutes, as hereinafter consecutively entitled and marked, are herewith filed as part hereof, viz., "joint resolutions respecting county surveyors," approved December 29th, A. D. 1837, marked exhibit L; "an act amending an act supplementary to an act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of a general land office," approved on *approved on* the 26th day of January, A. D. 1839, marked exhibit M; "an act entitled an act to provide for the return of surveys, for the collection of dues on lands, and for other purposes, approved on the 5th day of February, A. D. 1840, marked exhibit N; "an act entitled an act defining the mode by which the holders of conditional certificates shall establish the same," approved the 15th day of January, A. D. 1841, marked exhibit O; the constitution of the State of Texas, marked exhibit P; and other acts and premises herein exhibited and shewn.

And your petitioner further shews, that the said district surveyor, and deputy surveyor, as further color of their aforesaid refusals, unlawfully combining as aforesaid, do further pretend that, by reason of a supposed act of the Congress of the Republic of Texas, entitled "An act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, a copy whereof, marked exhibit Q, is herewith filed as a part hereof; and by reason of the force and operation of said supposed act, and of the doings and proceedings of the board or boards of commissioners, said to be therein provided for under the same; and because they, the said district surveyor and deputy surveyor are, as they al-

lege, prohibited from making any survey or location upon or by virtue of the certificates aforesaid, under the pains and penalties of another supposed act of the Congress of said Republic, entitled "An act prohibiting the location of fraudulent land claims," a copy whereof, marked exhibit R, is herewith filed as a part hereof, unless the said certificate, and the rights and claim of your petitioner, thereby and by the premises already fully established, should appear first to have been again established, adjudged, and certified in accordance with the provisions of another supposed act of the Congress of the said Republic, entitled "An act supplementary to an act to detect fraudulent land certificates, and to provide for the issuing of patents to legal claimants," a copy whereof, marked exhibit S, is herewith filed as a part hereof, or until the said certificate and the rights and claims of your petitioner as aforesaid should be again established, adjudged, and certified under and by virtue of a certain supposed second section of the eleventh article of the aforesaid constitution of the State of Texas, a copy whereof, marked exhibit T, is herewith filed, annexed to the copy aforesaid of the said constitution as a part hereof.

It is not now, or was it at the time of the said demand made by your petitioner, the duty of the said district surveyor and deputy surveyor to survey any lands upon and by virtue of the said certificate as so required; but that the said district surveyor and deputy surveyor are and were by law prohibited and made incompetent so to do. Whereas your petitioner charges the contrary of all and singular the aforesaid pretences to be true, and further charges and shews that each and all the aforesaid supposed acts, and also the said supposed second section of the eleventh article, supposed to be a part of the constitution aforesaid of the State of Texas, in so far as the same conflict with, lessen, impair, hinder, delay, or prevent the rights of your petitioner to such survey as before set forth, are, and were from the beginning, wholly unconstitutional, void, and of none effect, by virtue of the provisions of the aforesaid constitutions of the Republic of Texas and of the State of Texas, and by virtue of the provisions of the Constitution of the United States of America.

And as to the supposed act before mentioned, entitled "An act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants," your petitioner further shews that the provisions of the said act, if they were ever of any effect as to the rights of your petitioner, have long since determined and expired by reason of a certain other act of Congress of the said Republic, entitled "An act supplementary to an act supplementary to an act to detect fraudulent certificates, and to provide for the issuing patents to legal claimants," a copy whereof, marked exhibit U, is herewith filed as a part hereof.

And your petitioner further charges and shows, that by virtue of the premises he is of right lawfully entitled to have his said demanded land surveyed for him, and that the said district surveyor and deputy surveyor are and were in duty and by law bound to make and cause to be made the said survey, so as aforesaid designated and pointed out by your peti-

tioner, without delay; and that their and each of their refusals, actings, doings, and pretences aforesaid, are in violation of law and of the legal rights of your petitioner in the premises, and amount to a neglect and breach of official duty on the part of both and each of the aforesaid defendants, whereby your petitioner is greatly wronged and injured.

Wherefore, and for remedy whereof, your petitioner prays your honor to grant him a rule to the clerk of the district court in and for the county of Galveston aforesaid, ordering him to issue citations in due form, to be served upon the said John De Young, district surveyor as aforesaid, and upon Samuel P. Browne, deputy surveyor as aforesaid, defendants in this cause, commanding and requiring them to appear before your honor at the next term of your honorable court, to be holden in the city of Galveston according to law, then and there to show cause why a peremptory writ of mandamus should not at once issue against them, the said defendants, commanding them to make and cause to be made the said survey as demanded; and that Hiram B. Waller, district attorney of the State of Texas for the first judicial district, be also cited to appear at the same time and place, to take such part in this cause as the interests of the State may seem to him to require; and that in default of sufficient cause being so shewn as aforesaid, a peremptory writ of mandamus at once issue, commanding the said defendants to make and cause to be made the said survey as aforesaid; and that your petitioner may have judgment for his costs in this behalf expended against each and both of said defendants; and your petitioner will ever pray.

JOHNSON, ALLEN & HALE,
Counsel for petitioner.

Exhibit A.

Laws of the Republic of Texas, in two volumes, printed by order of the Secretary of State: volume 1, Houston. Printed at the office of the Telegraph, 1838.

The declaration of independence, made by the delegates of the people of Texas in general convention at Washington, on March 2d, 1836.

When a government has ceased to protect the lives, liberty, and property of the people from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted, and so far from being a guarantee for their inestimable and inalienable rights, becomes an instrument in the hands of evil rulers for their oppression; when the federal republican constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of sovereign States, to a consolidated central military despotism, in which every interest is disregarded but that of the army and the priesthood, both the eternal enemies of civil liberty, the ever ready minions of power, and the usual instruments of tyrants; when, long after the spirit of the constitution has departed, moderation is at length so far lost by those in power that even the semblance of freedom is removed, and the forms themselves of the constitution discontinued,

and so far from their petitions and remonstrances being regarded, the agents who bear them are thrown into dungeons, and mercenary armies sent forth to enforce a new government upon them at the point of the bayonet:

When, in consequence of such acts of malfeasance and abduction on the part of the government, anarchy prevails, and civil society is dissolved into its original elements; in such a crisis the first law of nature, the right of self preservation, the inherent and inalienable right of the people to appeal to first principles, and take their political affairs into their own hands in extreme cases, enjoins it as a right towards themselves, and a sacred obligation to their posterity, to abolish such government, and create another in its stead calculated to rescue them from impending dangers, and to secure their welfare and happiness.

Nations as well as individuals are amendable for their acts to the public opinion of mankind. A statement of a part of our grievances is therefore submitted to an impartial world, in justification of the hazardous but unavoidable step now taken of severing our political connexion with the Mexican people, and assuming an independent attitude among the nations of the earth.

The Mexican Government, by its colonization laws, invited and induced the Anglo-American population of Texas to colonize its wilderness under the pledged faith of a written constitution, that they should continue to enjoy that constitutional liberty and republican government to which they had been habituated in the land of their birth, the United States of America.

In this expectation they have been cruelly disappointed, inasmuch as the Mexican nation has acquiesced to the late changes made in the government by General Antonio Lopez de Santa Anna, who, having overturned the constitution of his country, now offers as the cruel alternative either to abandon our homes, acquired by so many privations, or submit to the most intolerable of all tyranny, the combined despotism of the sword and the priesthood:

It hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation, carried on at a far distant seat of government, by a hostile majority in an unknown tongue; and this too, notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government, and have in accordance with the provisions of the national constitution, presented to the general congress a republican constitution, which was without just cause contemptuously rejected:

It incarcerated in a dungeon, for a long time, one of our citizens, for no other cause but a zealous endeavor to procure the acceptance of our constitution and the establishment of a State government:

It has failed and refused to secure on a firm basis the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen:

It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain,) and, al-

though it is an axiom in political science that unless a people are educated and enlightened it is idle to expect the continuance of civil liberty, or the capacity for self-government:

It has suffered the military commandants stationed among us to exercise abitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power:

It has dissolved, by force of arms, the State Congress of Coahuila and Texas, and obliged our representatives to fly for their lives from the seat of government, thus depriving us of the fundamental political right of representation:

It has demanded the surrender of a number of our citizens, and ordered military detachments to seize and carry them into the interior for trial, in contempt of the civil authorities, and in defiance of the laws and the constitution:

It has made piratical attacks upon our commerce, by commissioning foreign desperadoes and authorizing them to seize our vessels and convey the property of our citizens to far distant parts for confiscation:

It denies us the right of worshipping the Almighty according to the dictates of our own conscience, by the support of a national religion, calculated to promote the temporal interests of its human functionaries, rather than the glory of the true and living God:

It has demanded us to deliver up our arms which are essential to our defence—the rightful property of freemen, and formidable only to tyrannical governments:

It has invaded our country both by sea and by land, with the intent to lay waste our territory and drive us from our homes, and has now a large mercenary army advancing to carry on against us a war of extermination:

It has through its emissaries incited the merciless savage, with the tomahawk and scalping knife, to massacre the inhabitants of our defenceless frontiers:

It has been, during the whole time of our connection with it, the contemptible sport and victim of successive military revolutions, and hath continually exhibited every characteristic of a weak, corrupt, and tyrannical government.

These and other grievances were patiently borne by the people of Texas until they reached that point at which forbearance ceases to be a virtue; we then took up arms in defence of the national constitution; we appealed to our Mexican brethren for assistance; our appeal has been made in vain; though months have elapsed, no sympathetic response has yet been heard from the interior; we are therefore forced to the melancholy conclusion that the Mexican people have acquiesced in the destruction of their liberty, and the substitution therefor of a military government; that they are unfit to be free, and incapable of self-government.

The necessity of self preservation, therefore, now decrees our eternal political separation.

We, therefore, the delegates with plenary powers of the people of

Texas, in solemn convention assembled, appealing to a candid world for the necessities of our condition, do hereby resolve and declare, that our political connexion with the Mexican nation has forever ended, and that the people of Texas do now constitute a free, sovereign, and independent Republic, and are fully invested with all the rights and attributes which properly belong to independent nations; and conscious of the rectitude of our intentions, we fearlessly and confidently commit the issue to the Supreme Arbiter of the destinies of nations.

In witness whereof we have hereunto subscribed our names.

RICHARD ELLIS,
President and delegate from Red river.

ALBERT H. S. KIMBLE, *Secretary.*

C. B. Stewart,	John S. Roberts,
James Collingsworth,	Robert Hamilton,
Edwin Waller,	Colin McKinney,
A. Brigham,	A. H. Latimer,
John S. D. Byrom,	James Power,
Francis Ruis,	Sam Houston,
J. Antonio Navarro,	Edward Conrad,
Wm. D. Lacy,	Martin Palmer,
William Menefee,	James Gaines,
John Fisher,	William Clarke, jun.,
Matthew Caldwell,	Sidney O. Pennington,
William Motley,	Samuel P. Carson,
Lorenzo de Zavalla,	Thomas J. Rusk,
George W. Smyth,	William C. Crawford,
Stephen H. Everett,	John Turner,
Elijah Stepp,	Benjamin Briggs Goodrich,
Claiborne West,	James G. Swisher,
William B. Scales,	George W. Barnett,
M. B. Menard,	Jesse Grimes,
A. B. Hardin,	E. O. Legrand,
John W. Bunton,	David Thomas,
Thomas J. Gazley,	S. Rhoades Fisher,
R. M. Coleman,	John W. Bower,
Sterling C. Robertson,	J. B. Woods,
George C. Childress,	Andrew Briscoe,
Bailey Hardeman,	Thomas Barnett,
Robert Potter,	Jesse B. Badgett,
Charles Taylor,	Stephen W. Blount.

I do hereby certify, that I have carefully compared the foregoing declaration, and find it to be a true copy from the original filed in the archives of the convention.

Given under my hand this 17th day of March, 1836.

Attest: H. S. KIMBLE,
Secretary of the convention.

Exhibit B.

Constitution of the Republic of Texas.

We, the people of Texas, in order to form a government, establish justice, insure domestic tranquility, provide for the common defence and general welfare, and to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution:

Article 1.

Section 1. The powers of this government shall be divided into three departments, viz., legislative, executive, and judicial, which shall remain forever separate and distinct.

Section 2. The legislative power shall be vested in a senate and house of representatives, to be styled the Congress of the Republic of Texas.

Section 3. The members of the house of representatives shall be chosen annually, on the first Monday of September each year, until Congress shall otherwise provide by law, and shall hold their offices one year from the date of their election.

Section 4. No person shall be eligible to a seat in the house of representatives until he shall have attained the age of twenty-five years, shall be a citizen of the Republic, and shall have resided in the county or district six months next preceding his election.

Section 5. The house of representatives shall not consist of less than twenty-four, nor more than forty members, until the population shall amount to one hundred thousand souls; after which time the whole number of representatives shall not be less than forty, nor more than one hundred: Provided, however, that each county shall be entitled to at least one representative.

Section 6. The house of representatives shall choose their speaker, and other officers, and shall have the sole power of impeachment.

Section 7. The senators shall be chosen by districts, as nearly equal in free population (free negroes and Indians excepted) as practicable; and the number of senators shall never be less than one-third, nor more than one-half, the number of representatives; and each district shall be entitled to one member, and no more.

Section 8. The senators shall be chosen for the term of three years, on the first Monday in September, shall be citizens of the Republic, reside in the district for which they are respectively chosen at least one year before the election, and shall have attained the age of thirty years.

Section 9. At the first session of Congress after the adoption of this constitution, the senators shall be divided, by lot, into three classes, as nearly equal as practicable; the seats of the senators of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, the third class at the end of the third year, in such manner that one-third shall be chosen each year thereafter.

Section 10. The Vice President of the Republic shall be President of the senate, but shall not vote on any question, unless the senate be equally divided.

Section 11. The senate shall choose all other officers of their body,

and a president pro tempore, in the absence of the Vice President, or whenever he shall exercise the office of President; shall have the sole power to try impeachments, and, when sitting as a court of impeachment, shall be under oath; but no conviction shall take place without the concurrence of two-thirds of all the members present.

Section 12. Judgment, in cases of impeachment, shall not extend to removal from office, and disqualification to hold any office of honor, trust, or profit, under this government; but the party shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

Section 13. Each house shall be the judge of the elections, qualifications, and returns of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members.

Section 14. Each house may determine the rules of its own proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, may expel a member, but not a second time for the same offence.

Section 15. Senators and representatives shall receive a compensation for their services, to be fixed by law; but no increase of compensation or diminution shall take effect during the session at which such increase or diminution shall have been made. They shall, except in case of treason, felony, or breach of the peace, be privileged from arrest during the session of Congress, and in going to, and returning from, the same; and for any speech or debate in either house they shall not be questioned in any other place.

Section 16. Each house may punish, by imprisonment, during the session, any person, not a member, who shall be guilty of any disrespect to the house, by any disorderly conduct in their presence.

Section 17. Each house shall keep a journal of its proceedings, and publish the same, except such parts as, in its judgment, require secresy. When any three members shall desire the yeas and nays on any question, they shall be entered on the journals.

Section 18. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which the two houses may be sitting.

Section 19. When vacancies happen in either house, the Executive shall issue writs of election to fill such vacancies.

Section 20. No bill shall become a law until it shall have been read on three several days in each house, and passed by the same, unless, in cases of emergency, two-thirds of the members of the house where the bill originated shall deem it expedient to dispense with the rule.

Section 21. After a bill shall have been rejected, no bill containing the same substance shall be passed into a law during the same session.

Section 22. The style of the laws of the Republic shall be, "Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled."

Section 23. No person holding an office of profit under the govern-

ment shall be eligible to a seat in either house of Congress, nor shall any member of either house be eligible to any office which may be created, or the profits of which shall be increased during his term of service.

Section 24. No holder of public moneys, or collector thereof, shall be eligible to a seat in either house of Congress until he shall have fully acquitted himself of all responsibility, and shall produce the proper officer's receipt thereof. Members of either house may protest against any act or resolution, and may have such protest entered on the journals of their respective houses.

Section 25. No money shall be drawn from the public treasury but in strict accordance with appropriations made by law; and no appropriations shall be made for private or local purposes unless two-thirds of each house concur in such appropriations.

Section 26. Every act of Congress shall be approved and signed by the President before it becomes a law; and if the President will not approve and sign such act, he shall return it to the house in which it shall have originated, with his reasons for not approving the same, which shall be spread upon the journals of such house, and the bill shall then be reconsidered, and shall not become a law unless it shall then pass by a vote of two-thirds of both houses. If any act shall be disapproved by the President, the vote on the reconsideration shall be recorded by yeas and noes. If the President shall fail to return a bill within five days (Sundays excepted) after it shall have been presented for his approval and signature, the same shall become a law, unless the Congress prevent its return, within the time above specified, by adjournment.

Section 27. All bills, acts, orders, or resolutions, to which the concurrence of both houses may be necessary, (motions or resolutions for adjournment excepted,) shall be approved and signed by the President; or, being disapproved, shall be passed by two-thirds of both houses in manner and form as specified in section twenty.

Article 2.

Section 1. Congress shall have power to levy and collect taxes and imposts, excise, and tonnage duties; to borrow money on the faith, credit, and property of the government; to pay the debts and to provide for the common defence and general welfare of the Republic.

Section 2. To regulate commerce; to coin money; to regulate the value thereof, and of foreign coin; to fix the standard of weights and measures; but nothing but gold and silver shall be made a lawful tender.

Section 3. To establish post offices and post roads; to grant charters of incorporation, patents, and copy-rights, and secure to the authors and inventors the exclusive use thereof for a limited time.

Section 4. To declare war, grant letters of marque and reprisal, and to regulate captures.

Section 5. To provide and maintain an army and navy, and to make all laws and regulations necessary for their government.

Section 6. To call out the militia; to execute the law; to suppress insurrections, and repel invasion.

Section 7. To make all laws which shall be deemed necessary and proper to carry into effect the foregoing express grants of power, and all other powers vested in the government of the Republic, or in any officer or department thereof.

Article 3.

Section 1. The Executive authority of this government shall be vested in a chief magistrate, who shall be styled the President of the Republic of Texas.

Section 2. The first President elected by the people shall hold his office for the term of two years, and shall be ineligible during the next succeeding term; and all subsequent presidents shall be elected for three years, and be alike ineligible; and, in the event of a tie, the house of representatives shall determine between the two highest candidates by a viva voce vote.

Section 3. The returns of the elections for President and Vice President shall be sealed up and transmitted to the speaker of the house of representatives by the holders of elections of each county; and the speaker of the house of representatives shall open and publish the returns in presence of a majority of each house of Congress.

Article 4.

Section 1. The judicial powers of the government shall be vested in one supreme court, and such inferior courts as the Congress may, from time to time, ordain and establish. The judges of the supreme and inferior courts shall hold their offices for four years, be eligible to re-election, and shall, at stated periods, receive for their services a compensation, not to be increased or diminished during the period for which they were elected.

Section 2. The Republic of Texas shall be divided into convenient judicial districts, not less than three nor more than eight. There shall be appointed for each district a judge, who shall reside in the same, and hold the courts at such times and places as Congress may by law direct.

Section 3. In all admiralty and maritime cases, in all cases affecting ambassadors, public ministers, or consuls, and in all capital cases, the district court shall have exclusive original jurisdiction, and original jurisdiction in all civil cases when the matter in controversy amounts to one hundred dollars.

Section 4. The judges, by virtue of their offices, shall be conservators of the peace throughout the Republic. The style of all process shall be, "The Republic of Texas;" and all prosecutions shall be carried on in the name and by the authority of the same, and conclude "against the peace and dignity of the Republic."

Section 5. There shall be a district attorney appointed for each district, whose duties, salaries, perquisites, and term of service shall be fixed by law.

Section 6. The clerks of the district courts shall be elected by the qualified voters for members of Congress in the counties where the courts are established, and shall hold their offices for four years, subject to removal by presentment of a grand jury and conviction by a petit jury.

Section 7. The supreme court shall consist of a chief justice and associate judges; the district judges shall compose the associate judges, a majority of whom with the chief justice shall constitute a quorum.

Section 8. The supreme court shall have appellate jurisdiction only, which shall be conclusive within the limits of the Republic; and shall hold its sessions annually, at such times and places as may be fixed by law: Provided, That no judge shall sit in a case in the supreme court tried by him in the court below.

Section 9. The judges of the supreme and district courts shall be elected by joint ballot of both houses of Congress.

Section 10. There shall be in each county a county court, and such justices' courts as the Congress may from time to time establish.

Section 11. The Republic shall be divided into convenient counties, but no new county shall be established, unless it be done on the petition of one hundred free male inhabitants of the territory sought to be laid off and established, and unless the said territory shall contain nine hundred square miles.

Section 12. There shall be appointed for each county a convenient number of justices of the peace, one sheriff, one coroner, and a sufficient number of constables, who shall hold their offices for two years, to be elected by the qualified voters of the district or county, as Congress may direct.

Justices of the peace and sheriffs shall be commissioned by the President.

Section 13. The Congress shall, as early as practicable, introduce by statute the common law of England, with such modifications as our circumstances in their judgment may require; and in all criminal cases the common law shall be the rule of decision.

Article 5.

Section 1. Ministers of the gospel, being by their profession dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatever, shall be eligible to the office of the Executive of the Republic, nor to a seat in either branch of the Congress of the same.

Section 2. Each member of the senate and house of representatives shall, before they proceed to business, take an oath to support the constitution, as follows:

"I, A. B., do solemnly swear (or affirm, as the case may be) that as a member of this general Congress I will support the constitution of the Republic, and that I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people."

Section 3. Every person who shall be chosen or appointed to any office of trust or profit shall, before entering on the duties thereof, take an

oath to support the constitution of the Republic, and also an oath of office.

ARTICLE 6.

Section 1. No person shall be eligible to the office of President who shall not have attained the age of thirty-five years, shall be a citizen of the Republic at the time of the adoption of this constitution, or an inhabitant of this Republic at least three years immediately preceding his election.

Section 2. The President shall enter on the duties of his office on the second Monday in December next succeeding his election, and shall remain in office until his successor shall be duly qualified.

Section 3. The President shall at stated times receive a compensation for his services, which shall not be increased or diminished during his continuance in office; and, before entering upon the duties of his office, he shall take and subscribe the following oath or affirmation:

"I, A. B., President of the Republic of Texas, do solemnly and sincerely swear (or affirm, as the case may be) that I will faithfully execute the duties of my office, and to the best of my abilities preserve, protect, and defend the constitution of the Republic."

Section 4. He shall be commander in chief of the army and navy of the Republic and militia thereof, but he shall not command in person without the authority of a resolution of Congress. He shall have power to remit fines and forfeitures, and to grant reprieves and pardons, except in cases of impeachment.

Section 5. He shall, with the advice and consent of two-thirds of the Senate, make treaties; and, with the consent of the Senate, appoint ministers and consuls, and all officers whose offices are established by this constitution, not herein otherwise provided for.

Section 6. The President shall have power to fill all vacancies that may happen during the recess of the senate; but he shall report the same to the senate within ten days after the next Congress shall convene; and, should the senate reject the same the President shall not renominate the same individual to the same office.

Section 7. He shall, from time to time, give Congress information of the state of the Republic, and recommend for their consideration such measures as he may deem necessary. He may, upon extraordinary occasions, convene both houses, or either of them. In the event of a disagreement as to the time of adjournment, he may adjourn them to such time as he may think proper. He shall receive all foreign ministers. He shall see that the laws be faithfully executed, and shall commission all the officers of the Republic.

Section 8. There shall be a seal of the Republic, which shall be kept by the President, and used by him officially; it shall be called the great seal of the Republic of Texas.

Section 9. All grants and commissions shall be in the name and by the authority of the Republic of Texas, shall be sealed with the great seal, and signed by the President.

Section 10. The President shall have power, by and with the advice and consent of the senate, to appoint a secretary of State, and such other heads of executive departments as may be established by law, who shall remain in office during the term of service of the President, unless sooner removed by the President, with the advice and consent of the senate.

Section 11. Every citizen of the Republic, who has attained the age of twenty-one years, and shall have resided six months within the district or county where the election is held, shall be entitled to vote for members of the general Congress.

Section 12. All elections shall be by ballot, unless Congress shall otherwise direct.

Section 13. All elections by joint vote of both houses of Congress shall be viva voce; shall be entered on the journals; and a majority of the votes shall be necessary to a choice.

Section 14. A Vice President shall be chosen at every election for President, in the same manner, continue in office for the same time, and shall possess the same qualifications of the President. In voting for President and Vice President, the electors shall distinguish for whom they vote as President, and for whom as Vice President.

Section 15. In cases of impeachment, removal from office, death, resignation, or absence of the President from the Republic, the Vice President shall exercise the powers and discharge the duties of the President until a successor be duly qualified, or until the President, who may be absent or impeached, shall return or be acquitted.

Section 16. The President, Vice President, and all civil officers of the Republic, shall be removable from office by impeachment for, and on conviction of treason, bribery, and other high crimes and misdemeanors.

Schedule.

Section 1. That no inconvenience may arise from the adoption of this constitution, it is declared by this convention that all laws now in force in Texas, and not inconsistent with this constitution, shall remain in full force until declared void, repealed, altered, or expire by their own limitation.

Section 2. All fines, penalties, forfeitures, and escheats, which have accrued to Coahuila and Texas, or Texas, shall accrue to this Republic.

Section 3. Every mail citizen who is by this constitution a citizen, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust or profit, under the Republic, any thing in this constitution to the contrary notwithstanding.

Section 4. The first President and Vice President that shall be appointed after the adoption of this constitution, shall be chosen by this convention, and shall immediately enter upon the duties of their offices, and shall hold said offices until their successors be elected and qualified as prescribed in this constitution, and shall have the same qualifications be invested with the same powers, and perform the same duties which are required and conferred on the Executive head of the Republic by this constitution.

Section 5. The President shall issue writs of election directed to the officers authorized to hold elections of the various counties, requiring them to cause an election to be held for President, Vice President, Representatives, and Senators to Congress, at the time and mode prescribed by this constitution, which election shall be conducted in the manner that elections have been heretofore conducted. The President, Vice President, and members of Congress, when duly elected, shall continue to discharge the duties of their respective offices for the time and manner prescribed by this constitution, until their successors be duly qualified.

Section 6. Until the first enumeration shall be made, as directed by this constitution, the precinct of Austin shall be entitled to one representative, the precinct of Brazoria to two representatives, the precinct of Bexar to two representatives, the precinct of Colorado to one representative, Sabine one, Gonzales one, Goliad one, Harrisburg one, Jasper one, Jefferson one, Liberty one, Matagorda one, Mina two, Nacogdoches two, Red River three, Victoria one, San Augustine two, Shelby two, Refugio one, San Patricio one, Washington two, Milam one, and Jackson one representative.

Section 7. Until the first enumeration shall be made as described by this constitution, the senatorial districts shall be composed of the following precincts: Bexar shall be entitled to one senator; San Patricio, Refugio, and Goliad one; Brazoria one; Mina and Gonzales one; Nacogdoches one; Red River one; Shelby and Sabine one; Washington one; Matagorda, Jackson, and Victoria one; Austin and Colorado one; San Augustine one; Milam one; Jasper and Jefferson one; and Liberty and Harrisburg one senator.

Section 8. All judges, sheriffs, commissioners, and other civil officers shall remain in office, and in the discharge of the powers and duties of their respective offices, until there shall be others appointed or elected under this constituton.

General Provisions.

Section 1. Laws shall be made to exclude from office, from the right of suffrage, and from serving on juries, those who shall hereafter be convicted of bribery, perjury, or other high crimes and misdemeanors.

Section 2. Returns of all elections for officers who are to be commissioned by the President shall be made to the secretary of State of this Republic.

Section 3. The President and heads of departments shall keep their offices at the seat of Government, unless removed by the permission of Congress, or unless in cases of emergency in time of war, the public interest may require their removal.

Section 4. The President shall make use of his private seal until a seal of the republic shall be provided.

Section 5. It shall be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education.

Section 6. All free white persons who shall emigrate to this republic, and who shall, after a residence of six months, make oath before some

competent authority that he intends to reside permanently in the same, and shall swear to support this constitution, and that he will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship.

Section 7. So soon as convenience will permit, there shall be a penal code formed on principles of reformation, and not of vindictive justice, and the civil and criminal laws shall be revised, digested, and arranged under different heads; and all laws relating to land titles shall be translated, revised, and promulgated.

Section 8. All persons who shall leave the country for the purpose of evading a participation in the present struggle, or shall refuse to participate in it, or shall give aid or assistance to the present enemy, shall forfeit all rights of citizenship, and such lands as they may hold in the Republic.

Section 9. All persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude: Provided, The said slave shall be the bona fide property of the person so holding said slave as aforesaid. Congress shall pass no laws to prohibit emigrants from bringing their slaves into the Republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall Congress have power to emancipate slaves; nor shall any slaveholder be allowed to emancipate his or her slave or slaves without the consent of Congress, unless he or she shall send his or her slave or slaves without the limits of the Republic. No free person of African descent, either in whole or in part, shall be permitted to reside permanently in the Republic without the consent of Congress; and the importation or admission of Africans or negroes into this Republic, excepting from the United States of America, is forever prohibited, and declared to be piracy.

Section 10. All persons (Africans, the descendants of Africans, and Indians excepted) who were residing in Texas on the day of the declaration of independence, shall be considered citizens of the Republic, and entitled to all the privileges of such. All citizens now living in Texas, who have not received their portion of land, in like manner as colonists, shall be entitled to their land in the following proportion and manner: every head of a family shall be entitled to one league and labor of land; and every single man of the age of seventeen and upwards, shall be entitled to the third part of one league of land. All citizens who may have, previously to the adoption of this constitution, received their league of land as heads of families, and their quarter of a league of land as single persons, shall receive such additional quantity as will make the quantity of land received by them equal to one league and labor, and one-third of a league, unless by bargain, sale, or exchange they have transferred, or may henceforth transfer, their right to said land, or a portion thereof, to some other citizen of the Republic; and in such case, the person to whom such right shall have been transferred shall be entitled to the same, as fully and amply as the person making the transfer might or could have been.

No alien shall hold land in Texas, except by titles emanating directly from the Government of this Republic. But if any citizen of this Republic shall die intestate or otherwise, his children or heirs shall inherit his estate, and aliens shall have a reasonable time to take possession of and dispose of the same, in a manner hereafter to be pointed out by law. Orphan children, whose parents were entitled to land under the colonization laws of Mexico, and who now reside in the Republic, shall be entitled to all the rights of which their parents were possessed at the time of their death. The citizens of the Republic shall not be compelled to reside on the land, but shall have their lines plainly marked.

All orders of survey legally obtained by any citizen of the Republic from any legally authorized commissioner, prior to the act of the late consultation closing the land offices, shall be valid. In all cases the actual settler and occupant of the soil shall be entitled, in locating his land, to include his improvement, in preference to all other claims not acquired previous to his settlement, according to the law of the land and this constitution: Provided, That nothing herein contained shall prejudice the rights of any other citizen from whom a settler may hold land by rent or lease.

And whereas the protection of the public domain from unjust and fraudulent claims, and quieting the people in the enjoyment of their lands, is one of the great duties of this convention; and whereas the legislature of Coahuila and Texas having passed an act in the year 1834 in behalf of General John T. Mason, of New York, and another on the 14th day of March, 1835, under which the enormous amount of eleven hundred leagues of land has been claimed by sundry individuals, some of whom reside in foreign countries, and are not citizens of the Republic, which said acts are contrary to articles fourth, twentieth, and fifteenth of the laws of 1824 of the General Congress of Mexico; and one of said acts, for that cause, has, by said General Congress of Mexico, been declared null and void: it is hereby declared that the said act of 1834, in favor of John T. Mason, and of the 14th of March, 1835, of the said legislature of Coahuila and Texas, and each and every grant founded thereon, is, and was from the beginning, null and void; and all surveys made under pretence of authority derived from said acts, are hereby declared to be null and void: and all eleven league claims located within twenty leagues of the boundary line between Texas and the United States of America, which have been located contrary to the laws of Mexico, are hereby declared to be null and void. And whereas many surveys and titles to lands have been made whilst most of the people of Texas were absent from home, serving in the campaign against Bexar, it is hereby declared that all surveys and locations of land made since the act of the late consultation closing the land offices, and all titles to land made since that time, are and shall be null and void.

And whereas the present unsettled state of the country, and the general welfare of the people, demand that the operations of the land office, and the whole land system, shall be suspended until persons

serving in the army can have a fair and equal chance with those remaining at home to select and locate their lands, it is hereby declared that no survey or title which may hereafter be made shall be valid, unless such survey or title shall be authorized by this convention, or some future Congress of the Republic. And with a view to the simplification of the land system, and the protection of the people and the government from litigation and fraud, a general land office shall be established, where all the land titles of the Republic shall be registered, and the whole territory of the Republic shall be sectionized, in a manner hereafter to be prescribed by law, which shall enable the officers of the government, or any citizen, to ascertain with certainty the lands that are vacant, and those lands which may be conveyed with valid titles.

Section 11. Any amendment or amendments to this constitution may be proposed in the house of representatives or senate, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on the journals, with the yeas and nays thereon, and referred to the Congress then next to be chosen, and shall be published for three months previous to the election; and if the Congress next chosen as aforesaid shall pass said amendment or amendments by a vote of two-thirds of all the members elected to each house, then it shall be the duty of said Congress to submit said proposed amendment or amendments to the people, in such manner and at such times as the Congress shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of Congress voting thereon, such amendment or amendments shall become a part of this constitution; provided, however, that no amendment or amendments be referred to the people oftener than once in three years.

Declaration of rights.

This declaration of rights is declared to be a part of this constitution, and shall never be violated on any pretence whatever. And in order to guard against the transgression of the high powers which we have delegated, we declare that every thing in this bill of rights contained, and every other right not hereby delegated, is reserved to the people.

First. All men, when they form a social compact, have equal rights; and no men, or set of men, are entitled to exclusive public privileges or emoluments from the community.

Second. All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit; and they have at all times an inalienable right to alter their government in such manner as they may think proper.

Third. No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience.

Fourth. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that pri-

vilege. No law shall ever be passed to curtail the liberty of speech or of the press; and in all prosecutions for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and fact, under the direction of the court.

Fifth. The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable searches and seizures; and no warrant shall issue to search any place, or seize any person or thing, without describing the place to be searched, or the person or thing to be seized, without probable cause, supported by oath or affirmation.

Sixth. In all criminal prosecutions the accused shall have the right of being heard, by himself or counsel, or both; he shall have the right to demand the nature and cause of the accusation; shall be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. And in all prosecutions by presentment or indictment, he shall have the right to a speedy and public trial, by an impartial jury; he shall not be compelled to give evidence against himself, or be deprived of life, liberty, or property, but by due course of law. And no freeman shall be holden to answer for any criminal charge, but on presentment or indictment by a grand jury, except in the land and naval forces, or in the militia when in actual service in time of war or public danger, or in cases of impeachment.

Seventh. No citizen shall be deprived of privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

Eighth. No title of nobility, hereditary privileges, or honors, shall ever be granted or conferred in this Republic. No person holding any office of profit or trust shall, without the consent of Congress, receive from any foreign State any presents, office, or emolument of any kind.

Ninth. No person, for the same offence, shall be twice put in jeopardy of life or limbs. And the right of trial by jury shall remain inviolate.

Tenth. All persons shall be bailable by sufficient security, unless for capital crimes, when the proof is evident or presumption strong; and the privilege of the writ of "habeas corpus" shall not be suspended except, in case of rebellion or invasion, the public safety may require it.

Eleventh. Excessive bail shall not be required, nor excessive fines imposed, or cruel or unusual punishments inflicted. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.

Twelfth. No person shall be imprisoned for debt in consequence of inability to pay.

Thirteenth. No person's particular services shall be demanded, nor property taken or applied to public use, unless by the consent of himself or his representative, without just compensation being made therefor according to law.

Fourteenth. Every citizen shall have the right to bear arms in defence of himself and the Republic. The military shall at all times, and in all cases, be subordinate to the civil power.

Fifteenth. The sure and certain defence of a free people is a well

regulated militia; and it shall be the duty of the legislature to enact such laws as may be necessary to the organizing of the militia of this Republic.

Sixteenth. Treason against this Republic shall consist only in levying war against it, or adhering to its enemies, giving them aid and support. No retrospective or ex post facto law, or laws impairing the obligation of contracts, shall be made.

Seventeenth. Perpetuities or monopolies are contrary to the genius of a free government, and shall not be allowed; nor shall the law of primogeniture or entailments ever be in force in this Republic.

The foregoing constitution was unanimously adopted by the delegates of Texas, in convention assembled, at the town of Washington, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the Republic the first year.

In witness whereof we have hereunto subscribed our names. 1836

RICHARD ELLIS,
President and delegate from Red river.

ALBERT H. S. KIMBLE, *Secretary.*

C. B. Stewart,	John S. Roberts,
James Collingsworth,	Robert Hamilton,
Edwin Waller,	Colin McKinney,
A. Brigham,	A. H. Latimore,
John S. D. Byrum,	James Power,
Francis Ruis,	Sam Houston,
J. Antonio Navarro,	Edward Conrad,
William D. Lacy,	Martin Palmer,
William Menefee,	James Gaines,
John Fisher,	William Clark, jun.,
Matthew Caldwell,	Sydney O. Pennington,
William Motley,	Samuel P. Carson,
Lorenzo de Zavalo,	Thomas J. Rusk,
George W. Smyth,	William C. Crawford,
Stephen H. Everett,	John Turner,
Elijah Stepp,	Benjamin Briggs Goodrich,
Claiborne West,	James G. Swisher,
William B. Seales,	George W. Barnett,
M. B. Menard,	Jesse Grimes,
A. B. Hardin,	E. O. Legrand,
John W. Bunton,	David Thomas,
Thomas J. Gazley,	S. Rhoades Fisher,
R. M. Coleman,	John W. Bower,
Sterling C. Robertson,	J. B. Woods,
George C. Childress,	Andrew Briscoe,
Baily Hardiman,	Thomas Barnett,
Robert Potter,	Jesse B. Badgett,
Charles Taylor,	Stephen W. Blount.

I do hereby certify that I have carefully compared the foregoing constitution, and find it to be a true copy from the original filed in the archives of the convention.

Given under my hand, this 17th day of March, 1836.

H. S. KIMBLE,
Secretary of the convention.

1835

Exhibit C.

Declaration of the people of Texas in general convention assembled.

Whereas, General Antonio Lopez de Santa Anna, and other military chieftains, have, by force of arms, overthrown the federal institutions of Mexico, and dissolved the social compact which existed between Texas and the other members of the Mexican confederacy; now, the good people of Texas, availing themselves of their natural rights, solemnly declare—

Nov 1835

1st. That they have taken up arms in defence of their rights and liberties, which were threatened by the encroachments of military despots, and in the defence of the republican principles of the federal constitution of Mexico, of eighteen hundred and twenty-four.

2d. That Texas is no longer morally or civilly bound by the compact of union; yet, stimulated by the generosity and sympathy common to a free people, they offer their support and assistance to such of the members of the Mexican confederacy as will take up arms against military despotism.

3d. That they do not acknowledge that the present authorities of the nominal Mexican republic have the right to govern within the limits of Texas.

4th. That they will not cease to carry on war against the said authorities, whilst their troops are within the limits of Texas.

5th. That they hold it to be their right, during the disorganization of the federal system, and the reign of despotism, to withdraw from the Union, to establish an independ[ent] government, or to adopt such measures as they may deem best calculated to protect their rights and liberties; but that they will continue faithful to the Mexican government, so long as that nation is governed by the constitution and laws that were formed for the government of the political association.

6th. That Texas is responsible for the expenses of her armies now in the field.

7th. That the public faith of Texas is pledged for the payment of any debts contracted by her agents.

8th. That she will reward, by donations in land, all who volunteer their services in her present struggle, and receive them as citizens.

These declarations we solemnly avow to the world, and call God to witness their truth and sincerity; and invoke defeat and disgrace upon our heads, should we prove guilty of duplicity.

Exhibit D.

Plan and powers of the provisional government of Texas.

ARTICLE 1.

That there shall be, and there is hereby, created a provisional government for Texas, which shall consist of a governor, a lieutenant-governor, and a general council to be elected from this body, one member from each municipality, by the majority of each separate delegation present; and the governor and lieutenant-governor shall be elected by this body.

ARTICLE 2.

The lieutenant-governor shall be president of the council, and perform the duties of governor in case of death, absence, or from other inability of the governor; during which time a president "pro tem." shall be appointed to perform the duties of the lieutenant-governor in council.

ARTICLE 3.

The duties of the general council shall be, to devise ways and means to advise and assist the governor in the discharge of his functions: they shall pass no laws, except such as, in their opinion, the emergency of the country requires; ever keeping in view the army in the field, and the means necessary for its comfort and support. They shall pursue the most effective and energetic measures to rid the country of her enemies, and place her in the best possible state of defence. Two-thirds of the members elect of the general council shall form a quorum to do business; and in order that no vacancy shall happen in the council, if any member, from death or other casualty, shall be incapacitated to act, the governor shall immediately, on information thereof, notify the member elected to fill the place; and, on his default, any member who has been elected to this body from the same jurisdiction. The governor and council shall be authorized to contract for loans, not to exceed one million of dollars, and to hypothecate the public lands, and pledge the faith of the country for the security of the payment. That they have power to impose and regulate impost and tonnage duties, and provide for their collection, under such regulations as may be most expedient. They shall have power, and it is hereby made the duty of the governor and council, to treat with the several tribes of Indians concerning their land claims, and, if possible, to secure their friendship.

They shall establish post offices and post roads, and regulate the rates of postage, and appoint a postmaster general, who shall have competent power for conducting this department of the provisional government, under such rules and regulations as the governor and council may prescribe. They shall have power to grant pardons, remit fines, and to hear and judge all cases usual in high courts of admiralty, agreeably to the law of nations.

They shall have power to appoint their own secretary and other officers of their own body; also, that they have the power to create and fill such offices as they may deem proper: Provided, nevertheless, That this power does not extend to officers heretofore rejected by this house.

That the governor and council have power to organize, reduce, or increase the regular forces as they may deem the emergencies of the country require.

ARTICLE 4.

The governor, for the time being, and during the existence of the provisional government, shall be clothed with full and ample executive powers, and shall be commander-in-chief of the army and navy, and of all the military forces of Texas by sea and land; and he shall have full power by himself, by and with the consent of the council, and by his proper commander, or other officer or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the country, to assemble in martial array, and put in warlike attitude, the inhabitants thereof; and to lead and conduct them by his proper officers, and with them to encounter, repel, resist, and pursue by force of arms, as well by sea and by land, within or without the limits of Texas; and also to destroy, if necessary, and conquer, by all proper means and enterprises whatsoever, all and every such person or persons as shall at any time in a hostile manner attempt or enterprise the destruction of our liberties, or the invasion, detriment, or annoyance of the country; and by his proper officers use and exercise over the army and navy, and the militia in actual service, the law martial in time of war, invasion, or rebellion; and to take and surprise, by all honorable ways and means consistent with the law of nations, all and every such person or persons, with their ships, arms, ammunition, and goods, as shall in a hostile manner invade or attempt the invading or annoying our adopted country; and that the governor be clothed with all these and all other powers which may be thought necessary by the permanent council, calculated to aid and protect the country from her enemies.

ARTICLE 5.

There shall be constituted a provisional judiciary in each jurisdiction represented, or which may hereafter be represented, in this house, to consist of two judges, the first and second; the latter to act only in the absence or inability of the first, and to be nominated by the council and commissioned by the governor.

ARTICLE 6.

Every judge, so nominated and commissioned, shall have jurisdiction over all crimes and misdemeanors recognised and known to the common law of England; he shall have power to grant writs of "habeas corpus" in all cases known and practised to and under the same laws; he shall have power to grant writs of sequestration, attachment, or arrest in all cases established by the "civil code" and "code of practice" of the State of Louisiana, to be regulated by the forms thereof; shall possess full testamentary powers in all cases; and shall also be made a court of records for conveyances which may be made in English, and not on stamped paper; and that the use of stamped paper be in all cases dispensed with; and shall be the "notary public" for their respective municipalities. All office fees shall be regulated by the governor and council. All other civil proceedings at law shall be suspended until the

governor and general council shall otherwise direct. Each municipality shall continue to elect a sheriff, alcalde, and other officers of ayuntamientos.

ARTICLE 7.

All trials shall be by jury, and in criminal cases the proceedings shall be regulated and conducted upon the principles of the common law of England; and the penalties prescribed by said law, in case of conviction, shall be inflicted, unless the offender shall be pardoned or fine remitted; for which purpose a reasonable time shall be allowed to every convict to make application to the governor and council.

ARTICLE 8.

The officers of the provisional government, except such as are elected by this house or the people, shall be appointed by the general council, and all officers shall be commissioned by the governor.

ARTICLE 9.

All commissions to officers shall be "in the name of the people, free and sovereign," and signed by the governor and secretary; and all pardons and remissions of fines granted shall be signed in the same manner.

ARTICLE 10.

Every officer and member of the provisional government, before entering upon the duties of his office, shall take and subscribe the following oath of office: "I, A. B., do solemnly swear (or affirm) that I will support the republican principles of the constitution of Mexico of 1824, and obey the declarations and ordinances of the consultation of the chosen delegates of all Texas in general convention assembled, and the ordinances and decrees of the provisional government; and I will faithfully perform and execute the duties of my office agreeably to law and to the best of my abilities, so help me God."

ARTICLE 11.

On charges and specifications being made against any officer of the provisional government for malfeasance or misconduct in office, and presented to the governor and council, a fair and impartial trial shall be granted, to be conducted before the general council; and if, in the opinion of two-thirds of the members, cause sufficient be shewn, he shall be dismissed from office by the governor.

ARTICLE 12.

The governor and council shall organize and enter upon their duties immediately after the adjournment of this house, and hold their sessions at such times and places as in their opinion will give the most energy and effect to the objects of the people, and to the performance of the duties assigned to them.

ARTICLE 13.

The general council shall appoint a treasurer, whose duties shall be clearly defined by them, and who shall give approved security for their faithful performance.

ARTICLE 14.

That all land commissions, empresarios, surveyors, or persons in anywise concerned in the location of land, be ordered forthwith to cease their operations during the agitated and unsettled state of the country, and continue to desist from further locations until the land offices can be properly systematized by the competent authorities which may be hereafter established; that fit and suitable persons be appointed to take charge of all the archives belonging to the different land offices, and deposite the same in safe places, secure from the ravages of fire or devastations of enemies; and that the persons so appointed be fully authorized to carry the same into effect, and be required to take and sign triplicate schedules of all the books, papers, and documents found in the several land offices; one of which shall be given to the governor and council, one left in the hands of the officers of the land offices, the other to be retained by the said persons; and they are enjoined to hold the said papers and documents in safe custody, subject only to the orders of the provisional government, or such competent authority as may hereafter be created. And the said persons shall be three from each department as commissioners, to be forthwith appointed by this house, to carry this resolution into full effect, and report thereof to the governor and council; that the political chiefs immediately cease their functions. The different archives of the different primary judges, alcaldes, and other municipal officers of the various jurisdictions, shall be handed over to their successors in office immediately after their election and appointment; and the archives of the several political chiefs of Nacogdoches, Brazos, and Bexar, shall be transmitted forthwith to the governor and council for their disposition.

ARTICLE 15.

All persons now in Texas and performing the duties of citizens, who have not acquired their quantum of land, shall be entitled to the benefit of the laws on colonization under which they emigrated; and all persons who may emigrate to Texas during her conflict for constitutional liberty, and perform the duties of citizens, shall also receive the benefits of the law under which they emigrated.

ARTICLE 16.

The governor and council shall continue to exist as a provisional government until the re-assembling of this consultation, or until other delegates are elected by the people and another government established.

ARTICLE 17.

This convention, when it may think proper to adjourn, may stand

adjourned to meet at the town of Washington on the first day of March next, unless sooner called by the Executive and council.

ARTICLE 18.

All grants, sales, and conveyances of lands, illegally or fraudulently made by the legislature of the State of Coahuila and Texas, located or to be located within the limits of Texas, are hereby solemnly declared null, void, and of no effect.

ARTICLE 19.

All persons who leave the country in its present crisis, with a view to avoid a participation in its present struggle, without permission from the alcalde or judge of their municipality, shall forfeit all or any lands they may hold or may have a claim to for the benefit of this government; provided, nevertheless, that widows and minors are not included in this provision.

ARTICLE 20.

All moneys now due, or that may hereafter become due, on lands lying within the limits of Texas, and all public funds or revenues, shall be at the disposal of the governor and general council; and the receipt of the treasurer shall be a sufficient voucher for any and all persons who may pay moneys into the treasury; and the governor and council shall have power to adopt a system of revenue to meet the exigencies of the country.

ARTICLE 21.

Ample powers and authority shall be delegated, and are hereby given and delegated, to the governor and general council of the provisional government of all Texas, to carry into full effect the provisions and resolutions adopted by "the consultation of the chosen delegates of all Texas in general convention assembled," for the creation, establishment, and regulation of said provisional government.

Exhibit E.

Gobierno Supremo del Estado libre de Coahuila y Texas.

El gobernador del Estado de Coahuila y Texas, á todos sus habitantes, sabed: Que el Congreso del mismo Estado ha decretado lo siguiente:

Decreto No. 309.

El Congreso constitucional del Estado libre, independiente, y soberano de Coahuila y Texas ha tenido á bien decretar:

Executive Department of the State of Coahuila and Texas.

The governor of the State of Coahuila and Texas, to all the inhabitants thereof: Be it known that the Congress of said State has decreed as follows:

Decree No. 309.

The Congress of the State of Coahuila and Texas has thought proper to decree:

Art. 1. Todas las personas ó familias que actualmente ecsisten en Texas, y se hayan introducido antes de la fecha de esta ley con el fin de establecerse en el pais, y que no han recibido terrenos segun las leyes de colonizacion, se declaran con derecho á las porciones que señala la de 24 de Marzo de 1825, con tal que reunan las cantidades que ella prescribe.

Art. 2. Los agraciados por el artículo anterior, que se introdujeron antes del 28 de Abril de 1832, pagarán en clase de reconocimiento al tiempo de recibir sus títulos, lo que señala el artículo 22 de la ley de 24 de Marzo de 1825; y los que lo verificaron despues, á rozon de sesenta pesos por cada sitio de agostadero y cinco pesos por labor de temporal.

Art. 3. El gobierno nombrará un comisionado por cada departamiento de los tres de Texas, para que expida los títulos correspondientes á las personas de que habla esta ley, segun las instrucciones de comisionados de 4 de Septiembre de 1837, sin sujecion al artículo ad cional. Dichos comisionados serán pagados por los interesados, segun lo señalado por decreto de 15 de Mayo de 1828.

Art. 4. El Executivo dispondrá lo conveniente á fin de que esta ley surta sus efectos con la brevedad posible.

Lo tendrá entendido el gobernador constitucional del Estado para su cumplimiento, haciendo imprimir, publicar, y circular.

Jose M. Mier, *Presidente*,
Diego Grant, *D. S.*,
Jose M. Carbajal, *D. S.*

Por tanto mando se imprima, publique, circule, y se le dé el debido cumplimiento.

Art. 1. All persons or families now residing in Texas, and who shall have emigrated previous to the date of this law, for the purpose of settling in the country, and who have not received lands according to the colonization laws, are hereby declared to be entitled to the portions designated by the law of the 24th of March, 1825, provided that they possess the qualifications therein prescribed.

Art. 2. Those favored in the preceding article, who emigrated previous to the 28th April, 1832, shall pay as an acknowledgment, at the time of receiving their titles, the amount specified in article 22d of the law of the 24th March, 1825, and those who came since, at the rate of sixty dollars a sitio for grazing, and five dollars a labor for temporal land.

Art. 3. The executive shall appoint a commissioner for each of the three departments of Texas to issue the titles, corresponding to the persons mentioned in this law, agreeably to the commissioners' instructions of the 4th of September, 1827, without being subject to the additional article. Said commissioners shall be paid by the persons interested, agreeably to the provision made by the decree of the 15th of May, 1828.

Art. 4. The executive shall take the proper measures in order that this law may be carried into effect as soon as possible.

For its fulfilment, the governor of the State shall cause it to be printed, published, and circulated.

J. M. Mier, *President*,
D. Grant, *D. S.*
J. M. Carbajal, *D. S.*

Wherefore I command it to be printed, published, circulated, and duly fulfilled.

Dado en la ciudad de Monclova, á 2 de Mayo de 1835.

AUGUSTIN VIESCA.

J. M. IRALA, *Secretario.*

Given at the city of Monclova on the 2d of May, 1835.

AUGUSTIN VIESCA.

J. M. IRALA, *Secretary.*

Exhibit F.

Decreto No. 16.

El Congreso constituyente del Estado libre, independiente, y soberano de Coahuila y Texas, deseando que por todos los medios posibles se logre el aumento de la poblacion de su territorio, el cultivo de sus fértiles terrenos, la cria y multiplicacion de los ganados, y el progreso de las artes y el comercio, arreglándose en todo á la acta constitutiva, á la constitucion federal, y á las bases establecidas en el soberano decreto No. 72 del Congreso general, ha tenido á bien decretar la siguiente:

Ley de colonizacion.

Artículo 1o. Todos los estrangeros que en virtud de la ley general de 18 de Augusto de 1824, por que se les concede seguridad para sus personas y propiedades en la nacion Mexicana, quisieren pasarse á qualquiera de las poblaciones del Estado de Coahuila y Texas, pueden hacerlo, y el mismo Estado los convida y llama.

Art. 2o. Los que así lo verificarán, lejos de ser incomodados, serán admitidos por las autoridades locales de dichas poblaciones, quienes les permitirán se ocupen con toda libertad en el exercicio honesto que mas les acomode, con tal que respecten las leyes generales de la nacion y las particulares del Estado.

Art. 3o. El estrangero que, estando ya en el territorio de Coahuila y Texas, resolviere vecindarse en él, lo declarará así ante el

Decree No. 16.

The constituted Congress of the State of Coahuila and Texas, desiring by every possible means to augment the settlement of its territory, to advance the raising and increase of stock, and the progress of the arts and commerce, in conformity to the constitutional act, the constitution of the Republic, and the basis established by decree No. 72, of the general Congress, has thought proper to decree the following:

Colonization law.

Article 1. All foreigners who in virtue of the general law of the 18th of August, 1824, which guarantees the security of their persons and property in this Republic, shall wish to emigrate to any of the settlements of the State of Coahuila and Texas, are permitted to do so; and the said State invites and calls them.

Art. 2. Those who shall thus emigrate, far from being molested, shall be admitted by the local authorities of said settlements, and permitted by the same freely to engage in any honest pursuit, provided they respect the general laws of the Republic and the laws of the State.

Art. 3. Any foreigner already arrived in the State of Coahuila and Texas, who shall resolve to establish himself and become domi-

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For its fulfilment, the governor of the State shall cause it to be printed, published, and circulated.

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Art. 2. Those who shall thus emigrate, far from being molested, shall be admitted by the local authorities of said settlements, and permitted by the same freely to engage in any honest pursuit, provided they respect the general laws of the Republic and the laws of the State.

Art. 3. Any foreigner already arrived in the State of Coahuila and Texas, who shall resolve to establish himself and become domi-

ayuntamiento del pueblo que eliga para su vecindad; el ayuntamiento, en tal caso, recibirá juramento que ha de hacer de guardar y cumplir las constituciones federal y del estado, y observar la religion que en la primera se previene, alistará en un libro registro de estrangeros, que criará al efecto, su nombre y el de su familia, si la tuviere con razon de su procedencia, edad, estado, oficio, y la de haber prestado el juramento prevenido, reputándolo desde entonces, y no antes, por vecino.

Art. 4o. Desde el dia en que qualquier estrangero quede avecindado conforme al artículo anterior, es libre para denunciar qualquier terreno valido, y la autoridad politica respectiva con la obligacion de pasar al gobierno el expediente que se formare para su aprobacion, si lo considerare como á todo natural del pais, arreglándose á las leyes vigentes de la materia.

Art. 5o. Los estrangeros de qualquiera nacion, y los naturales de los Estados Unidos Mexicanos, podrán proyectar la formacion de nuevas poblaciones en terrenos enteramente validos, y aun de propiedad particular en el caso del artículo 35; pero los nuevos pobladores, que se presenten para ser admitidos, habrán de acreditar con certificacion de las autoridades de su procedencia, su Cristiandad, moralidad, y buenas costumbres.

Art. 6o. Los estrangeros que vinieren á tiempo que el soberano Congreso general halla prohibida su entrada á colonizar, como pueda hacerlo del año de quarenta en adelante, ó antes respecto de los de alguna nacion, ya no serán admiti-

ciliated therein, shall make a declaration to that effect before the ayuntamiento of the place he shall select as his residence, by which in that case he shall be sworn to obey the Federal and State constitutions, and to observe the religion prescribed in the former; and his name and those of his family, if he have any, shall be registered in a book to be kept for the purpose, specifying the place he is from, his age, occupation; whether he is married, and that he has taken the oath prescribed, considering him henceforth, and not before, as domiciliated.

Art. 4. Any foreigner, from the time he is domiciliated agreeably to the foregoing article, shall be permitted to specify any vacant land, and it shall be the duty of the respective political authority to forward the instrument that shall be drawn to the executive for his approval, should he consider the applicant the same as the natives of the country, conforming to the existing laws on the subject.

Art. 5. Foreigners of any nation whatever, and natives of this Republic, can project the formation of new towns upon lands entirely vacant; and in the case of article 35, even upon those privately appropriated; but the new settlers who present themselves to be admitted, shall prove by certificate from the authorities of the place from which they came, their christianity and good moral character.

Art. 6. Foreigners who shall arrive at a time when the general Congress shall have prohibited their entrance for the purpose of colonizing, as after the year 1840 the same will have power to do, or sooner with respect to those of some

dos, y los que ocuriesen en tiempo útil siempre habrán de sugetarse á las medidas de precaucion en seguridad de la federacion que el supremo gobierno, sin perjudicar el objeto de esta ley, puede adoptar con respecto á ellos.

Art. 7o. El gobierno cuidará de que en los veinte leguas limítrofes con los Estados Unidos del Norte, y diez litorales sobre la costa del seno Mexicano en la demarcacion del Estado, no se hagan otros establecimientos que los que merecieren la aprobacion del supremo de la Union, á cuyo efecto le pasará informadas quantas solicitudes se hayan en el particular, ya sean Mexicanos ó estrangeros sus autores.

Art. 8o. Los proyectos de nueva poblacion, en que una ó mas personas ofrescan conducir á sus expensas de cien familias para ariba, presentarán al gobierno, quien, hallándolos conforme á esta ley, admitirá y señalará luego á los capitulantes el terreno en que han de situarse, y el término de seis años para dentro de él presenten el número de familias por que capitularon, pena de perder los derechos y gracias ofrecidas á su favor en proporcion de las familias que dexaren de introducir, y de quedar nula en lo absoluto la capitulacion si no presentaren á lo menos cien familias.

Art. 9o. Los contratos por los capitulantes ó empresarios, con los familias que vengan á sus expensas, los guarantisa esta ley en quanto sean conformes con lo que ella dispone.

nations, shall then not be admitted; and those who shall apply within the proper time, shall always submit to such precautionary measures for the safety of the federation, with regard to themselves, as the supreme executive, without prejudicing the object of this law, shall adopt.

Art. 7. The executive shall take care that within twenty frontier leagues bordering on the United States line, and ten literal leagues upon the coast of the Gulf of Mexico, within the limits of the State, no other settlements shall be made than such as shall meet the approbation of the Executive of the Union, to whom all future petitions on the subject, accompanied by a corresponding report, shall be transmitted.

Art. 8. Projects for new settlements, wherein one or more persons shall offer to bring, at their own expense, one hundred families or more, shall be presented to the Executive; who, on finding them in conformity to this law, shall admit the same, and immediately designate to the contractors the land whereon they shall establish themselves, and the term of six years within which they shall present the number of families for which they contracted, under the penalty of losing the rights and privileges offered in their favor, in proportion to the number of families they shall fail to introduce, and of the contract becoming absolutely null, should they not present one hundred families at the least.

Art. 9. Contracts made by the contractors or empresarios with the families which come at their expense shall be guaranteed by this law so far as they are in conformity with the provisions thereof.

Art. 10o. En la distribucion de tierras serán preferidos, con vista de sus diplomas expedidas por el supremo poder executivo, los militares que segun estos tengan derecho á ellas, y los ciudadanos Mexicanos no militares, entre quienes no se hará otra distincion que la funden sus méritos particulares y servicios hechos á la patria, ó, en igualdad de circunstancias, la vecindad en el lugar á que pertenecen los terrenos. La cantidad en que estos hallan de repartirse la señalarán los artículos que siguen:

Art. 11o. Un quadro de tierra, que por cada lado tenga una legua de cinco mil varas, ó lo que es lo mismo una superficie de veinte y cinco millones de varas, se llamará sitio, y esta será la undidad para contar uno, dos, ó mas sitios, así como la unidad para contar una, dos, ó mas labores será un millon de varas quadradas, ó mil varas por cada lado, de que se compondrá una labor. La vara para estas dimenciones constará de tres pies geométricos.

Art. 12o. Supuesta aquella unidad y la distincion de terrenos que á su repartimiento se hará entre los de agostaderos ó propios para cría de ganados, y los de labor de regadio y de temporal, esta ley concede al capitulante ó capitulantes de nueva poblacion, por cada cien familias que introduscan y establescan en el Estado, cinco sitios de agostadero y cinco labores, que en lo menos en su mitad labrá de ser de temporal; pero solo podrán cobrar en razon de ochocientos familias, aunque introduxeren mas, y ninguna fraccion que no complete centenar, qualquiera que sea, les

Art. 10. In the distribution of lands, a preference shall be given to the military, in consideration of the patents issued them by the supreme Executive entitling them to land, and to Mexican citizens not military, between whom no other distinction shall be made than such as is founded in their special merit and services rendered the country, or in equal circumstances a residence in the place where the land is situated. The quantity whereby the lands are to be distributed shall be designated in the following articles.

Art. 11. A square of land measuring one league, consisting of five thousand varas on each side, or what is the same thing, a superficies containing twenty-five million varas, shall be called a sitio, and this shall be the unit for enumerating one, two, or more sitios, in the same manner as one million square varas, or one thousand varas on each side, which shall constitute a labor, shall be the unit for counting one, two, or more labors. The vara for this measure shall consist of three geometrical feet.

Art. 12. Adopting the aforesaid unit as a standard, and observing the distinction to be made on distributing lands between grazing lands, or those suitable for raising stock, and irrigable tillage land, and that which is not irrigable, this law shall grant to the contractor or contractors for forming new settlements five sitios of grazing land, and five labors, of which at least one-half shall be land not irrigable, for every hundred families they shall introduce and establish in the State; but they shall receive this premium only for eight hundred families, although they

dará derecho á premio ni proporcionalmente.

Art. 13o. Si alguno ó algunos capitulantes, en razon de las familias que hallan introducido, deban adquerir, conforme al artículo anterior, mayor terreno que el de once leguas quadradas de las concederá; pero tendrán obligacion de enagenar el exceso dentro de doce años, y de no verificarlo lo hará la autoridad política respectiva, vendiéndolo en pública subasta y entregando á sus dueños el producido liquido, deducidas todas costas de venta.

Art. 14o. A cada familia de las comprendidas en capitulacion cuyo único exercicio sea el de labrar la tierra, se dará una labor; si tuviere cria de ganados, se le completará sobre aquella con tierras de agostadero un sitio; y si solo fuere ganadería ó criadora, tendrá únicamente de estas mismas tierras de agostadero una superficie de veinte y quatro millones de varas.

Art. 15o. Los hombres no casados tendrán igual asignacion quando hallan pasado al matrimonio, y los estrangeros que contraigan con Mexicana tendrán la quarta parte mas, contendándose antes los absolutamente solos ó que no hagan cuerpo en alguna familia, sean estrangeros ó naturales, con la quarta parte de dicha asignacion, única que podrá dárseles y que se les computará quando esta halla de hacérseles.

Art. 16o. Las familias y hombres no casados, que habiendo hecho por sí y de su cuenta el viage quisieren agregarse á algunas de las nuevas poblaciones, podrán hacerlo en todo tiempo, y sus asigna-

should introduce more; and no fraction whatever, not completing one hundred, shall entitle them to a premium, not even proportionally.

Art. 13. Should any contractor or contractors, on account of the families they shall have introduced, be entitled, according [to] the foregoing article, to more than eleven square leagues of land, it shall be granted them, but they shall be obliged to alienate the excess within twelve years; and should they not, it shall be done by the respective political authority at public sale, delivering the proceeds to the owners thereof, after deducting the costs of sale.

Art. 14. One labor shall be granted to each family included in the contract whose only occupation is the cultivation of the soil; and should the same also raise stock, grazing land shall be added to complete a sitio; and should the raising of stock be the exclusive occupation, the family shall receive a superficies of twenty-four million square varas, (being a sitio lacking one labor.)

Art. 15. Unmarried men shall receive the same quantity on marrying, and foreigners who marry natives of the country shall receive one-fourth more; those who are entirely single, or who do not compose a part of any family, contenting themselves rather with the fourth part of the quantity aforesaid, which shall be computed to them on the assignment of their land.

Art. 16. Families and single men, who having emigrated separately, and at their own expense, shall wish to annex themselves to any of the new settlements, can do so at all times, and the same

ciones de terrenos serán respectivamente las mismas de que hablan los dos artículos anteriores; pero si lo verificaren dentro de los seis primeros años de establecida la poblacion, se dará una labor mas á las familias, y los no casados, en lugar de la quarta que señala el artículo 15, tendrán la tercera parte.

Art. 17o. Toca al gobierno el aumentar las porciones de que hablan los artículos 14, 15, y 16, á proporcion de la familia industria y actividad de los colonos, segun los informes que á su vez se hicieren acerca de estas circunstancias los ayuntamientos y comisionados, teniendo siempre presente el mismo gobierno lo prevenido en el artículo 12 del decreto del Congreso general sobre la materia.

Art. 18o. Las familias qui vinieren conformes el artículo 16, se presentarán inmediatamente á la autoridad política de la poblacion que hallan elegido, quien, hallando en ellas los requisitos que exige esta ley para los nuevos pobladores, los admitirá pondrá en posesion de los terrenos que les correspondan, y dará luego cuenta al gobierno, á fin de que esta por sí ó por personas que al efecto comisione les despache su título.

Art. 19o. Los Indios de todas las naciones confinantes con el Estado, así como los tribus errantes que hay dentro del, serán recibidos en los mercados sin exigirles derechos algunos por el comercio que hagan de efectos del pais; y si atraidos así, y por la dulzura y confianza con que ademas serán tratados, quisieren algunos, declarándose antes por nuestra religion é instituciones, establecerse en qua-

quantity of land shall be respectively assigned them as specified in the two foregoing articles; but should they do so within the first six years from the establishment of the settlement, one labor more shall be granted to families; and single men, instead of one-fourth as specified in article 15, shall receive one-third.

Art. 17. It shall belong to the Executive to increase the portions specified in articles 14, 15, and 16, in proportion to the family, industry, and activity of the colonists, according to the separate reports upon the subject that shall be rendered by the ayuntamientos and commissioners; always bearing in mind the provisions of the article 12th of the decree of the general Congress on the subject.

Art. 18. Families that shall arrive conformably to the 16th article shall present themselves forthwith to the political authority of the settlement they shall have selected, who, recognising on their part the necessary conditions required by this law, shall admit the same, put them in possession of the lands to which they are entitled, and give notice immediately to the Executive that the same of himself, or through persons he shall commission for that purpose, may issue them their titles.

Art. 19. The Indians of all nations bordering on the State, as well as the wandering tribes within the same, shall be admitted in market exempt from all duties in their traffic in the effects of the country; and should any of the same, being attracted in this manner, and by the mildness and confidence with which they shall otherwise be treated, wish to establish themselves in any of the settlements, after de-

lesquiera de los pueblos que se formen, se les admitirá y dará el mismo terreno que á los pobladores, de que hablan los artículos 14 y 15, prefiriéndose siempre los Indios naturales á los que son estrangeros.

Art. 20o. Para que no queden vacios de posesion á posesion, de que se cuidará mucho en la distribucion de terrenos, se hará esta por quadros ú otra figura, aunque sea irregular, si así lo exige la localidad; y dicha distribucion, como la designacion de los en que se han de plantar las nuevas poblaciones, se harán previa citacion de los colindantes, si los hubiere en obio de disenciones y pleitos.

Art. 21o. Si por error habido en las concesiones fuere ocupado algun terreno de propiedad particular, acreditado aquel se dará al que lo obtenia otro igual valido enteramente, y ademas se indemnizará por el dueño á justa tasacion de peritos, y conforme á las leyes, de sus impensas ó pastos en las mejoras que aparescan.

Art. 22o. Los nuevos pobladores en clase de reconocimiento pagarán al Estado por cada sitio de agostadero treinta pesos, veinte reales por labor de temporal, tres pesos quatro reales por de riego, y así proporcionalmente segun la clase y parte del terreno que se les halla repartido; pero la satisfaccion de aquellas cantidades no lo verificarán sino dentro de seis años de establecidos y por tercios, el primero á los quatro años, el segundo á los cinco, y el tercero á los seis años; pena de perder su terreno el que

claring themselves in favor of our institutions and religion, they shall be admitted, and share the same quantity of land as the settlers specified in articles 14 and 15, always preferring the native to foreign Indians.

Art. 20. That no vacancies be left between the tracts which shall be carefully avoided in the distribution of lands, it shall be laid off in squares or other forms, although irregular, should the locality so require; and to prevent litigation and dispute in making the distribution aforesaid, as well as in the designation of sites whereon new towns are to be founded, the adjoining proprietors, should there be any, shall be previously notified.

Art. 21. Should any appropriated land be taken possession of through error in concession, on proof thereof an equal quantity of land entirely vacant shall be granted to the person who obtained the same; and moreover he shall be indemnified by the owner of the land aforesaid, agreeably to a just estimate made by competent judges and according to the laws, for the expense he has incurred in the improvements that shall appear thereon.

Art. 22. The new settlers shall pay to the State, as an acknowledgment for each sitio of grazing land, thirty dollars; for each labor not irrigable, two and a half; and for each that is irrigable, three and a half; and so on proportionally according to the class and quantity of land distributed to them; but the payment thereof need not be completed under six years from settlement, and in three instalments: the first four, the second five, and the third six years, under a penalty of forfeiting the land for a failure

faltare á algunos de los plazos. Se exceptuan de este pago los capitulantes y los militares de que habla el artículo 10, aquellos por lo respectivo á las tierras que en clase de premio hallan merecido, y estos por lo que hallan obtenido con arreglo á sus diplomas.

Art. 23o. Los ayuntamientos, cada uno en su comarca, harán gratis la recaudacion de aquellos caudales por medio de una comision de dentro ó fuera de su seno, y los pasarán segun se fueren cobrando al depositario ó tesorero que lo sea de sus fondos y arbitrios, quien otorgará el recivo correspondiente, y sin mas interes que el de dos y medio por ciento, único que se le abonará, los tendrá á disposicion del gobierno, dándole parte cada mes de su ingreso y egreso, y del discuido y disimulo que advierta en su cobro. Del manejo de este y el de la comision responderán con sus intereses los mismos empleados y comisionados, y ademas los individuos del ayuntamiento que lo nombraren. Y, para que en todo tiempo pueda hacerse efectiva esta responsabilidad, se verificarán aquellos nombramientos por votacion nominal, y dará aviso de ellos al gobierno inmediatamente.

Art. 24o. El gobierno venderá á los Mexicanos, y solo á estos los terrenos que quieran comprar, pero cuidando de que no se reunan en una sola mano mas de once sitios, y baxo la condicion de que el comprador ha de cultivar los que adquiera por este título dentro de seis años, contados desde su adquisicion, pena de perderlos. El precio de cada sitio supuesta, la condicion antérior sera el de cien pesos, si la

in any of the said payments; the contractors and the military mentioned in article 10 shall be exempt from this payment—the former as regards the lands granted them as a premium, and the latter for that which they obtain agreeably to their patents.

Art. 23. The ayuntamientos, each in its own limits, shall collect the aforesaid funds gratis, by a committee appointed from within or without their own body; and shall remit the same as fast as collected to the depositary treasurer of their funds and means, who shall give the corresponding receipt for no other compensation than two and a half per cent., which is all that shall be allowed him, and who shall hold the said funds at the disposal of the executive, giving an account monthly of the amounts received and remitted, and of any remissness or fraud he shall observe in their collection. The treasurers and committees shall be held responsible with their property for their management, and moreover the individuals of the ayuntamiento that shall appoint them; and that this responsibility may at all times be effectual, the said appointments shall be made viva voce, and information thereof shall be immediately given to the executive.

Art. 24. The Government shall sell to Méxicans, and to them only, the lands they shall wish to purchase, but shall take care that there shall not be united in the same hands more than eleven leagües, and subject to the condition, that the purchaser shall cultivate those he shall acquire by this title within six years from the acquisition, under the penalty of forfeiting the same. Allowing the aforesaid con-

tierra fuere de temporal, y doscientos cinquenta si fuere de regadillo.

Art. 25o. Hasta despues de seis años de publicada esta ley, la legislatura [d]el Estado no podrá variarla en lo que dispone sobre el reconocimiento y precio que se ha de pagar por los terrenos y la cantidad y calidad en que estos deben repartirse á los nuevos pobladores y venderse á los Mexicanos.

Art. 26o. Los nuevos pobladores que dentro de seis años, contados desde la fecha de su posesion, no hallan cultivado ú ocupado segun su calidad el terreno que se les hubiere cedido, se entenderá que lo han renunciado, y la autoridad política respectiva procederá luego á recogérselo y recogerles el título.

Art. 27o. Los capitulantes y militares de que se ha hablado á su vez, y los que por compra han adquirido terrenos, podrán enagenar estos en qualesquiera tiempo, con tal que el sucesor se obligue á cultivarlos dentro del mismo término que debia hacerlo el primer posedor, y contados los años corridos á este. Los demas pobladores podrán enagenar los suyos quando las hallan cultivado en su totalidad y no antes.

Art. 28o. En testamento arreglado á las leyes que actualmente rigen ó que rigieren en lo sucesivo, todo nuevo poblador, desde el dia de su establecimiento, puede disponer de su terreno, aunque no lo tenga cultivado; y si muriere intestado, le sucederán en la persona

dition, the price of each sitio shall be one hundred dollars for grazing land; one hundred and fifty for tillage land not irrigable; and two hundred and fifty for irrigable tillage land.

Art. 25. Until the expiration of six years from the publication of this law, the legislature of the State cannot alter the same in the provisions thereof, relative to the acknowledgment, and the price that shall be paid for the lands, and the quantity and class, whereby the same shall be distributed to the new settlers, and sold to Mexicans.

Art. 26. It shall be understood that the new settlers who shall not, within six years from the date of their possession, have cultivated or occupied, agreeably to their class, the lands that shall be granted them, have renounced the same; and the respective political authority shall immediately proceed to take back from them the lands and titles.

Art. 27. The contractors and the military, already mentioned in their turn, and those who have acquired lands by purchase, can alienate the same at any time, provided the successor obliges himself to cultivate the same, within the same term as was obligatory on the part of the original proprietor, likewise reckoning the term from the date of the primitive titles. The other settlers shall be authorized to alienate their land when they shall have completed the cultivation thereof, and not before.

Art. 28. Every new settler, from the time of his settlement, shall be permitted to dispose of his land, although it shall not be cultivated, by testament made in conformity to the laws that are now, or shall hereafter be, in force; and should he die intestate, his lawful heir or

ó personas que fueren llamadas por las mismas leyes á todas sus bienes y derechos, reportando en uno y otro caso los derechos, las obligaciones y condiciones que corrian á su causante.

Art. 29. Las tierras adquiridas á virtud de esta ley por ningun título podrán pararse á manos muertas.

Art. 30o. El nuevo poblador que para establecerse en pais estrangero resolviere salir del territorio del Estado, podrá hacerlo libremente con todos sus intereses; pero, verificada dicha salida, no conservará mas su terreno, y si antes no lo enagenere, ó su enagenacion no fuere conforme al artículo 27, quedará valido enteramente.

Art. 31o. Los estrangeros, que conforme á esta ley hallan obtenido tierras y establecido en los nuevas poblaciones, se considerarán desde luego naturalizados en el pais, y, casándose con Mexicana, contraen un mérito particular para alcanzar la carta de ciudadanos del Estado, á reserva de lo que sobre ambos particulares se disponga por la constitucion del Estado.

Art. 32o. Durante los diez primeros años, desde el dia en que se hallan establecido los nuevas poblaciones, serán libres estas de toda contribucion, como quiera que se denomine, á excepcion de la que en caso de invasion de enemiga ó para prevenirla se imponga generalmente; y los frutos y efectos de la agricultura é industria de los nuevos pobladores tampoco pagarán alcabala, ni otro género de impuesto, en lugar alguno de los del Estado, si no solo los derechos á que se refiere el artículo siguiente. Concluido aquel término de

heirs shall succeed him in the enjoyment of his rights and property, assuming in both cases the obligations and conditions incumbent on the respective grantee.

Art. 29. The lands acquired by virtue of this law shall not be held in mortmain by any title whatever.

Art. 30. New settlers, who shall resolve to leave the State to establish themselves in a foreign country, shall be at liberty to do so with all their property; but after thus leaving, they shall no longer hold their land; and should they not have previously disposed of the same, or should not the alienation be in conformity to article 27, it shall become entirely vacant.

Art. 31. Foreigners, who shall have obtained land according to this law and established themselves in the new settlements, shall from that time be considered naturalized in the country; and by marrying natives of the Republic, they shall possess a special merit for obtaining letters of citizenship of the State, saving what the constitution of the State, on either subject, shall provide.

Art. 32. During the first ten years from the time the new settlements are founded, the same shall be free from all taxes of whatever denomination, except such as shall be generally imposed to prevent or repel foreign invasion; neither shall the products and effects of agriculture and industry pay excise, or other kinds of impost, in any part of the State, except only the duties to which the following article refers; after the expiration of the aforesaid term, the new settlements shall be liable to the same burthens as the old, and the colonists the

nuevas poblaciones, será iguales en cargas á las antiguas, y los colonos á los demas habitantes del Estado.

Art. 33o. Desde el dia de su establecimiento los nuevos pobladores serán libres para promover todo género de industria, y podrán tambien explotar minas de toda clase, entendiéndose con el gobierno supremo de la federacion respecto de las que pertenecen á las rentas generales de ella, y sugetándose en el laborio de las demas á las ordenanzas y decretos establecidos ó que se establecieren sobre el ramo.

Art. 34o. Las poblaciones se fundarán en los sitios mas á propósito á juicio del gobierno, ó de la persona comisionada por este al intento; y para cada una se designarán quatro leguas quadradas, cuya area podrá ser en una figura regular ó irregular conforme á la localidad.

Art. 35o. Si alguno ó algunos de dichos sitios pertenecieren á propiedad particular, y el establecimiento de ellas de las nuevas poblaciones fuere de una conocida utilidad general, podrán sin embargo aprovecharse previa la indemnizacion justa á juicio de hombres buenos.

Art. 36o. Las solares para casas en las nuevas poblaciones se darán de valde á los capitulantes de estas, lo mismo que á los artezanos de toda clase, los que necesitaren para sus taleres, y á los demas pobladores se les rematarán en venta pública, previo avaluo, con la obligacion de satisfacer su precio por tercios el primero á los seis meses, el segundo á los doce, y el tercero á los diez y ocho; por todos los dueños de solares, inclusos capitulantes, pagarán anualmente un peso por cada uno de los que diesame as the other inhabitants of the State.

Art. 33. The new settlers, from the time of their establishment, shall be free to promote any kind of industry; they shall also be permitted to work mines of every description, agreeing with the national Executive with respect to those that pertain to the national revenue, and subjecting themselves in working the others to the ordinances and duties that are now, or shall hereafter be established with regard to the business of mining.

Art. 34. Towers shall be founded on such sites as the Executive, or the person commissioned by him for that purpose, shall judge most appropriate; and four square leagues shall be designated for each, whose area may be regular or irregular, as the locality shall require.

Art. 35. Should any of the sites aforesaid have been privately appropriated, and the establishment of the new towns thereon be of notorious general utility, they may be appropriated to this purpose notwithstanding, after such indemnification as in the opinion of the appraisers shall be just.

Art. 36. Building lots in the new towns shall be given gratis to the contractors thereof, and to all kinds of mechanics those they shall need for their workshops, and to other settlers they shall be sold after valuation thereof. They shall be sold at public auction, and the purchasers shall be obligated to pay the price of the same in three instalments; the first in six; the second in twelve; and the third in eighteen months. All the owners of lots, the contractors included, shall pay one dollar per annum for each

fruten, y así este cauda[l], como el producido de aquellas ventas lo cobrarán los ayuntamientos y aplicarán por construccion de iglesia en la misma poblacion.

Art. 37o. A lo menos en lo posible se compondrán las poblaciones de naturales y estrangeros, y al dedicarlas se cuidará de la mejor disposicion y rectitud en las calles, dándoles direccion paralela de sur á norte y de oriente á occidente, quando lo permita el terreno.

Art. 38o. Para la mejor situacion de las nuevas poblaciones, su formacion arreglada, y reparto exacto de tierras y solares, el gobierno, en consequencia de haver admitido algun proyecto, y convenidose con el capitulante ó capitulantes que lo hubieren presentado, comisionará una persona de conocimientos y en confianza, instruyéndolo en el particular quanto estime necesario y conveniente, y facultándolo para que baxo su responsabilidad nombre uno ó mas agrimensores, que scientificamente tiren medias y practiquen las otras operaciones que puedan ofrecerse.

Art. 39o. El gobierno, con arreglo al último arancel de escrivanos de la antigua de México, señalará al comisionado sus dietas, y este de acuerdo con los colonos fixará al agrimensor ó agrimensores sus derechos; pero ambos gastos serán de cuenta de los mismos colonos, y su pago en el modo y términos que todos entre si convinieren.

Art. 40o. Luego que se hallan reunido quarenta familias á lo menos, se procederá al formal establecimiento de la nueva poblacion, jurando todos la constitucion general y particular del Estado en manos del comisionado; y en seguida

lot, which, together with the proceeds of the sales aforesaid, shall be collected by the ayuntamientos and applied to the building of churches in said towns.

Art. 37. The towns shall consist, as nearly as possible, of natives and foreigners; and in laying off the same, care shall be taken to have the streets well laid out and straight, running parallel north and south, and east and west, as nearly as the land shall permit.

Art. 38. For the better situation and the regular formation of the new towns, and the exact division of lands and lots, the executive, pursuant to his admission of any project, and agreement with the contractor or contractors who shall have presented the same, shall commission a person of intelligence and probity, giving him such instructions on the subject as he shall deem necessary and proper, and authorizing him, upon his own responsibility, to appoint one or more surveyors to execute the survey agreeably to the science, and perform such other agency as may offer.

Art. 39. The executive shall assign the commissioner his daily salary, agreeably to the last fee bill for notaries of the ancient court of oyer and terminer of Mexico; and the latter, with the concurrence of the colonists, shall fix the surveyor's fees; but the expense in both cases shall be paid by the colonists, and in the manner the parties shall agree.

Art. 40. As soon as forty families at least shall be collected, they shall proceed to the formal establishment of the new town, and shall all be sworn by the commissioner to support the Federal and State constitutions; they shall then

guida, baxo la presidencia del mismo por esta primera vez, pasarán á la eleccion de su municipalidad.

Art. 41o. La nueva poblacion, cuyos habitantes no baxen de doscientos, eligirá su ayuntamiento, si á ocho leguas de distancia no hubiere otra que lo tenga ya establecido, en cuyo caso se agregará á esta; el número de individuos de que deva constar los ayuntamientos se arreglaran por las leyes vigentes.

Art. 42o. Se habilita á los estrangeros, á reserva de lo que dispusiere la constitucion del Estado, para que pedan elegir y ser elegidos miembros de sus juntas municipales.

Art. 43o. Los gastos municipales, y todos aquellos que se consideren necesarios ó de comun utilidad á las nuevas poblaciones, los propondrá al gobierno por conducta del gefe político el ayuntamiento respectivo, acompañándole un plano de los arbitrios que en su concepto sean justos y á propósito para cubrirlos; y si el plano propuesto fuere aprobado por el gobierno, mandará este que se ponga en práctica sin perjuicio de lo que resolviere el Congreso, á quien luego lo pasará con su informe, y el del mismo gefe político, quien siempre dirá en la materia lo que ocurra.

Art. 44. Para la apertura ó compostura de caminos y otros trabajos públicos en Texas, el gobierno remitirá al gefe de aquel departamento los individuos, que en los demas lugares del Estado fueren sentenciados á presidio por vagos ú otros delitos. Estos mismos sugetos se aplicarán á trabajos de particulares, satisfaciéndoles su com-

for this first occasion, the commissioner presiding, proceed to the election of their municipality.

Art. 41. A new town containing two hundred inhabitants or more, shall elect an ayuntamiento, should there be no other already established within eight leagues, in which case it shall be annexed to the latter. The number of individuals of which the ayuntamientos shall consist, shall be regulated by the existing laws.

Art. 42. Foreigners shall be qualified to elect, and to be elected, members of their municipal juntas, reserving the provision that shall be made by the constitution of the State.

Art. 43. The municipal expenses, and all such as are deemed necessary or for the public good in the new towns, shall be proposed to the Executive by the respective ayuntamiento through the channel of the political chief, accompanied by a plan of means which the said ayuntamiento shall conceive to be just and proper for covering the said expenses; and should the plan proposed be approved by the Executive, he shall order the same to be executed, subject, however, to the resolution of Congress, to whom it shall be immediately transmitted, with the report of the Executive, and that [of] the political chief thereon, who shall always state what occurs on the subject.

Art. 44. The Executive shall send to the chief of the department of Texas the individuals who shall be sentenced to *to* fortresses as vagrants or for other crimes, in other parts of the State, for the purpose of opening and repairing roads and for other public works in that department. The said criminals may be employed to work for

petente jornal; y, concluido su tiempo de condena, podrán en clase de colonos agregarse á alguna de las nuevas poblaciones, y obtener el correspondiente terreno, si por su correccion se hubiesen hecho dignos á juicio del mismo gefe de departamento, sin cuya calificacion que así lo acredite, no serán admitidos.

Art. 45o. El gobierno, de acuerdo con los ordinarios ecclesiásticos respectivos, cuidará de que se provea á las nuevas poblaciones del competente número de parrocos, y, con acuerdo de la misma autoridad, propondrá el Congreso su dotacion que deverán pagar los nuevos pobladores.

Art. 46o. Los nuevos pobladores, en quanto á la introduccion de esclavos se sugetarán á las leyes establecidas, y que en adelante se establecieren sobre la materia.

Art. 47o. Las solicitudes pendientes sobre el objeto, á que prove esta ley, se despacharán con arreglo á ella, y á este fin se pasarán al gobierno; y las familias que hubiere establecidas en la demarcacion del Estado, sin tener aun terreno señalado legitimamente, se sugetarán á la misma, y á lo que disponga el supremo gobierno de la Union, respecto de las que se hallen dentro de veinte leguas limítrofes con los Estados Unidos de América, y diez litorales sobre la costa del seno Mexicano.

Art. 48o. Esta ley se publicará en todos los pueblos del Estado; y para que llegue á noticia de los demas que componen la federacion, se comunicará sus respectivos Congresos por la secretaría de este, cuidando particularmente el gobierno de pasar copia certificada de ella,

private individuals for competent daily wages, and at the expiration of their punishment they shall be permitted to annex themselves to any of the new towns as colonists, and obtain the corresponding land, should they have reformed and become worthy in the opinion of the chief of [the] department, without whose certificate to that effect, they shall not be admitted.

Art. 45. The Executive, in connexion with the respective ordinary ecclesiastics, shall take care that the new towns are provided with a competent number of pastors, and with the concurrence of the same authority he shall propose to Congress the salary to be paid them by the new settlers.

Art. 46. In respect to the introduction of slaves, the new settlers shall subject themselves to the laws that are now, and shall be hereafter, established on the subject.

Art. 47. The petitions pending upon the object for which this law provides shall be dispatched according to the same, and for this purpose they shall be passed to the Executive, and all families established in the State, without yet having land legally assigned them, shall conform to the said law, and to what the Executive of the Union shall direct, with respect to those who are within twenty leagues of the line of the United States of the north, and ten border leagues upon the coast of the gulf of Mexico.

Art. 48. This law shall be published in all the towns of the State, and that the same may be known to the other States of the Union, it shall be communicated to the respective legislatures thereof, through the secretary's office of this, and in com-

en cumplimiento del artículo 161 de la constitucion federal á las dos cámaras y supremo poder executivo de la nacion, con la suplica á este de que por sus enviados en las potencias estrangeras haga generalizar su conocimiento.

Lo tendrá entendido el gobernador interino del Estado para su cumplimiento, haciendolo publicar y circular.

Dando en la villa del Saltillo á 24 de Marzo de 1825.

Gobierno supremo del Estado libre de Coahuila y Texas.

Secretaria del Congreso de Coahuila y Texas.

Instrucciones á que debe arreglarse el comisionado para el *para el* repartamiento de tierras á los neubos colones, que se presenten á poblar en el Estado, segun la ley de colonizacion de 24 de Marzo de 1825.

Art. 1. Será abligacion del comisionado con vista de los capitulaciones que el empresario halla celebrado con el gobierno, y teniendo á la vista la ley de colonizacion de 24 de Marzo, examinar con tada escrupulosidad los certificaciones que deben traer consigo los colonos estrangeros estendidas por los autoridades de su procedencia, en que acrediten su cristiandad, moralidad, y buenos costumbres, segun previene el articulo 5o de dicha ley, sin cuyo requisitos no se admitiran en la colonia.

Art. 2. Para prevenir que alguna certificacion sea falsa, ninguna dará por bastante el comisionado sin que primero informe por escrito el empresario de su legitimidad,

pliance with article 161 of the federal constitution, the Executive shall take special care to transmit a certified copy thereof to both chambers, and to the Executive of the Union, requesting him to give general circulation to the said law through his ministers to foreign powers.

For its fulfilment, the governor of the State ad interim, shall cause it to be published and circulated.

Given at Saltillo, March 24th, 1825.

Executive department of the State of Coahuila and Texas.

Secretary's office of the Congress of Coahuila and Texas.

Instructions to which the commissioner for the distribution of lands to the new colonists who present themselves to settle in the State, according to the colonization law of March 24th, 1825, shall conform.

Art. 1. The commissioner shall be obligated, pursuant to the contract made by the empresario with the Government, also to the colonization law of the 24th of March, to examine in the most scrupulous [manner] the certificates which colonists from foreign countries are required to bring from the authorities of the place from which they come, thereby proving themselves to be of the Christian religion, and to possess a good moral character, without which requisites they shall not be admitted in the colony.

Art. 2. In order to guard against false certificates, the commissioners shall admit none until after the empresario, to whom they shall previously be transmitted for the

á cuyo fin se las pasará previamente.

Art. 3. Recibirá á cada uno de los nuevos colonos estrangeros, juramento en forma de sugetarse á la constitucion federal de los Estodos Unidos Meqicanos, á la particular del Estado, y á les leyes generales y particulares del paiz que adopta por su patria.

Art 4. Espidirá á nombre del Estado los titulos de tierras, con arreglo á la ley, poniendo en posesion de ellas á los nuevos pobladores, segun las formalidades legales, y previa citacion de colindantes si los hubiere.

Art. 5. No dará posesion á ningun colono que este establecido, ó que quiera establecerse dentro de los veinte leguas limitrofes con los Estados Unidos del Norte, y diez litorales á menos que el interesado le presente orden especial de este gobierno, en que couste haberlo aprobado el supremo de la federacion.

Art. 6. Procurará que no queden terrenos vacios de posesion á posesion, y para que á primera vista de conoscan los limites de cada uno, obligará á los colonos á que dentro del termino de un año amojonen sus tierras con linderos fixos y permanentes.

Art. 7. Nombrará baxo su responsabilidad al agrimensor que ha de practican scientificamente, las medias de tierras exigiendole previamente juramento en forma de obrar bien y fielmente en su oficio.

Art. 8. Formará un libro vecerro en papel del sello 3o, en el que escribirá los titulos de tierras que reporta á los colones con especefi-

purpose shall give information in writing relative to the legitimacy of the same.

Art. 3. He shall administer to each of the new colonists from foreign countries the oath in form to obey the Constitution of this Republic, that of the State, and the general and special laws of his adopted country.

Art. 4. He shall issue the land titles in the name of the State, in conformity to the law giving the new settlers possession of the same, in legal form, and previously citing the adjoining proprietors, should there be any.

Art. 5. He shall not give possession to any colonist, settled or intending to settle, within twenty frontier or border leagues of the United States of the North, and ten of the Gulf of Mexico, unless the person interested shall present him a special order from this Government, wherein the approbation thereof of the national Government shall be manifested.

Art. 6. He shall adopt the necessary measures that no vacant lands be left between possessions, and in order that the limits of each one may be known at first sight, he shall oblige the colonists to set landmarks upon their lands within one year, with fixed and permanent boundaries.

Art. 7. He shall appoint, under his own responsibility, the surveyor, who shall run off the lands scientifically, previously requiring him to take the oath in form well and faithfully to execute the duties of his office.

Art. 8. He shall form a book in calf of paper, bearing the impression of the third seal, wherein he shall write the titles of the lands

cacion de sus nombres, linderos, y demas requisitos y circumstancias legales; y de este libro sacará testimonios de cada posesion, en papel del sello segundo, que entregará al interesado para que le sirva de titulo.

Art. 9. Cada poblador pagará el valor del papel sellado que se invierta en la expedicion de sus titulos, tanto en el original como en el testimonia.

Art. 10. Este libro se conservará en el archivo de la nueva colonia, y de el sacará para remitir al gobierno un extracto que comprenda el número de colonos por sus nombres, y la cantidad de tierras que á cada uno se ha dado, con expresion de las que sean para labor de regadio, ó temporal, y las que se les de pará agostadero.

Art. 11. Eligira el sitio que sea mas aproposito para la fundacion de la poblacion ó poblaciones, que hallan de establecerse segun el numero de familias de que se componga la colonia, teniendo presente lo que sobre este punto previene la ley de colonizacion.

Art. 12. Señalado el sitio destinado á la poblacion, cuidara de que las primeras líneas corran de sur á norte, y de oriente á poniente; designará un quadro ciento veinte varas por lado con exclucion de las calles, que se denominará plaza mayor, ó plaza de la constitucion. Y este será el punto centrico de donde deberán partir las calles, y sobre estas la formacion de quadras ó manzanas arregladas al modelo que se acompaña.

Art. 13. La manzana que resulte al oriente con vista á la plaza

which he distributes to the colonists, specifying their names, the boundaries, and other requisite and legal circumstances; and he shall take from the said book attested copies of each possession upon paper of the second seal, which he shall deliver to the person interested to serve him for a title.

Art. 9. Each settler shall pay the value of the stamp paper used in issuing his titles, both in the original and in the attested copy.

Art. 10. Said book shall be preserved in the archives of the new colony, and an abstract shall be taken therefrom to be transmitted to Government, containing the number and names of all the colonists, the quantity of land given to each, expressing those which are for cultivation, irrigable or not irrigable, and those which are given them for grazing lands.

Art. 11. He shall select the site the most appropriate for founding the town or towns, which are to be established according to the number of families of which the colony consists, bearing in mind the provision of the colonization law upon this subject.

Art. 12. The site destined for the new town having been determined, he shall see that the principal lines run north and south, east and west. He shall designate a square, measuring one hundred and twenty varas on each side, exclusive of the streets, to be called the principal or Constitutional square. This shall be the central point from which the streets shall run for forming squares or blocks thereon, agreeably to the accompanying plan.

Art. 13. The block fronting the principal square upon the east

mayor se destinará para templo, casa cural, y otros edificios para la iglesia, y la que queda al occidento para casas consistoriales. En otro lugar acomodadose señolará una manzana para plaza de mercado, otro para carsel y casa de correccion, otra para escuela, y otros edificios de instruccion publica, y otra á estramuros para cementerio.

Art. 14. Dispondrá que los calles sean rectos, y que tengan veinte varras de ancho para la salubridad de la poblacion.

Art. 15. Los artezanos que al tiempo de fundarse una nueva poblacion se presenten á ser vecinos de ella, tendrán derecho á recibir un solar cada uno, sin otra corta que el del papel sellado, que sea necessarios para la expedicion de su titulo y la corta pension de un peso annal para la construccion de la iglesia.

Art. 16. Los solares de que habla el articulo anterior serán repartidos precidamente por suerte á excepcion del empresario, á quien se le darán dos en el sitio que elija.

Art. 17. Los demas solares serán apreciados por peritos segun la localidad, y estos se venderán entre los demas colonos por los mismos precios á que resulten por el avaluo, en el caso de que se presenten muchas interesados á alguno ó algunos solares por su situacion preferente, ó por otros circumstancias que puedan promover la concorrencia de competidores, se decidiran estos por suertes en el modo que previene el articulo precedente. Aplicandose los productos de dichos solares á los gastos de la fabrica material de la iglesia de la poblacion.

side, shall be destined for a church, curate's dwelling, and other ecclesiastical edifices; and that on the west for municipal buildings or town halls. In another suitable place, he shall point out a block for a market square, one for a jail and house of correction, one for a school and other buildings for public instruction, and another without the limits of the town for a burial ground.

Art. 14. He shall cause the streets to be laid off straight, twenty yards wide, for the salubrity of the town.

Art. 15. Mechanics, who on founding a new town present themselves to settle therein, shall be entitled to a lot each, to be attended with no expense except the cost of the stamped paper necessary for issuing their titles, and the small tax of one dollar per annum for building the church.

Art. 16. The lots mentioned in the preceding article shall be distributed by lot, with the exception of the empresario, to whom two lots shall be given in the site he selects.

Art. 17. The other lots shall be valued by appraisers, and sold out to the other colonists according to the valuation. Should there be several applicants for any lot or lots on account of their more eligible situation, or other circumstances that may cause competition, they shall decide by lot in the manner provided in the preceding article. The product of the said lots shall be appropriated to building a church in the town.

Art. 18. Promovera en union del empresario, que todos los habitantes correspondientes á la jurisdicion de cada poblacion tomen solares en ellas, y construyan sus casas dentro del tiempo determinado pena de perderlos.

Art. 19. Formará un libro vecerro para cada nueva poblacion, en el qual se escribirán las concesiones de solares donados ó vendidos con expresion de sus linderos y demas circumstancias de estilo, del que se sacarán los respectivos testimonios en el papel del sello correspondiente que entregará á los interesados para que les sirva de titulo.

Art. 20. Levantará un plano topografico comprensivo de los poblaciones, que se hallan fundado en ella, que remitirá al gobierno, dexando copia igual en el libro vecerro de la colonia.

Art. 21. Dispondrá que en cada paso de los rios sobre los caminos generales en que se funde alguna poblacion, se construya y ponga en uso corriente un chalan ó bote costeado por los vecinos de la misma poblacion, cobrandose por el pasage una moderada contribucion, que servirá para pager el salario del challonero ó barquero, las recomposiciones del bote, y el resto á beneficio de los fondos públicos.

Art. 22. En los parages en que no haya poblacion encargará la habilitacion de los rios al colono, que en qualquiera de ellas se establesca, cobrando por el pasage una moderada pension, mientras que llega el caso de que se arrienden estos derechos por cuenta del Estado. Los colonos que se determinen á facilitar los pasos de los rios en los terminos indicados formarán una cuenta exacto y documenada de los gastos que hagaran en

Art. 18. He shall proceed, together with the empresario, to have all the inhabitants belonging to the jurisdiction of each town take lots therein, and build their houses within the time specified, under penalty of forfeiting their lots.

Art. 19. He shall form a book in calf, for each new town, wherein the appropriation of lots, whether by donation or sale, shall be recorded, expressing their boundaries and other particulars, agreeably to the usual form, from which attested copies shall be taken upon paper of the corresponding stamp, to be delivered to the persons interested to serve them as titles.

Art. 20. He shall execute a topographical plan comprising the towns founded in the new colony, which he shall forward to the Government, leaving in the colonial register an exact copy thereof.

Art. 21. He shall cause a ferry to be established at each crossing of the rivers upon the highways, whereon any town is founded; the flat or boat to be provided at the expense of the inhabitants of the said town, establishing moderate rates of toll, out of which the ferryman shall be paid, the boats repaired, and the remainder added to the public funds.

Art. 22. In places where there is no town, he shall charge the colonist settling in any of the same with the establishment of ferries, taking a moderate toll until those taxes are rented out for the use of the State. Colonists who resolve to establish ferries on the terms herein indicated, shall keep an exact and certified account of the expense they incur in building boats, and another, also attested, of the product of the toll, to entitle

la construccion de chalanes ó botes llevarán otra de los que produsca la pension, tambien justificada, para que quando llegue el caso de que por el Estado se arrienden estos derechos tengan accion á cobrar la excedencia de gastos que aun no haya podido cubrir la pension que por ahorá se dexa á su favor.

Art. 23. Precidirá las elecciones populares de que trata el articulo 40, de la ley de colonizacion para el nombramiento de ayuntamiento, poniendo en posesion de sus empleos á los nombrados.

Art. 24. Tendrá especial cuidado de que los porciones de tierras, que se conceden á los colonos por los articulos 14, 15, y 16, se midan por los agrimensores con toda exactitud sin permitir que ninguno lleve mas terreno que el que está señalado por la ley, y en el caso contrario será responsable personalmente.

Art. 25. En casa de que algun colono solicite, conforme el articulo 17, se le aumente el terreno sobre el que señalan los articulos citados por razon de su familia, industria, y actividad, lo hará presente por escrito al comisionado, exponiendo los razones, en que funda so solicitud quien la dirijirá al gobierno con su respectivo informe baxo la responsabilidad mas estrecha para proveer lo conveniente.

Art. 26. Todos los instrumentos publicos, titulos, ó qualesquiera documentos que extienda el comisionado, se han de escribir en Castellano, el mismo idioma se usará en los memoriales, decretos, informes que presenten los colonos ó empresarios sobre qualquier asunto, ya sea para remitir al gobierno ó

them when those taxes are rented by the State, to receive an indemnification for the deficiency of the toll at present allowed them for covering the expense.

Art. 23. He shall preside at the popular elections mentioned in article 40 of the colonization law, for choosing the ayuntamiento, and putting the persons chosen in possession of office.

Art. 24. He shall take special care that the portions of land granted to colonists by articles 14, 15, and 16, be measured by the surveyors with the greatest accuracy, without permitting any one to take more land than what is pointed out by the law; and in the contrary event he shall be personally responsible.

Art. 25. Should any colonist, agreeably to article 17, solicit to have the quantity of land pointed out in the aforesaid articles increased in his favor on account of his family, industry, and enterprise, he shall manifest the same, setting forth the reasons in which he founds his petition, in writing, to the commissioner, who shall forward it to the executive, accompanied by his respective report, under the most rigid responsibility of providing what is proper.

Art. 26. All public instruments, titles, or documents whatever, drawn by the commissioner, shall be written in the Spanish language; the same shall be used in memorials, decrees, and reports presented by the colonists, or empresarios, on any subject whatever, whether to be transmitted to the

que déva conservarse en el archivo de la colonia.

Art. 27. Todos los instrumentos publicos de posesion y testimonios que firme el comisionado, serán autorizados con dos testigos de ásistencia.

Art. 28. El comisionado es responsable personalmente de todos los actos y providencias que efectue ó practique en contravencion de la ley de colonizacion y estas instrucciones.

Saltillo, 4 de Septembre de 1827.

JOSE A. TIJERINA,
Sec. suplente.
MIGUEL ARCINEAGA,
Dip. Sec.

Articulo adicional.

El comisionado no puede conceder por si terreno alguno ni dar posesion en los de marcados para empresas, mientras estas no esten concluidas, sino con conocimiento y aprobacion del mismo empresario, aun quando aquella concesion este otorgada por el gobierno.

Nota.

Con fecha de 15 de Mayo de 1828, dio el honorable Congreso su decreto número 62 que arregla el pago que debe hacerse á los comisionados por su trabajo, y en diez de Abril del presente año, expidio la misma honorable asamblea el decreto numero 128, que en parte reforma y aclará estas instrucciones cuyas dos leyes deberá tener presente todo comisionado por repartimiento de tierras.

Leona Vicario,
25 de Abril de 1830.

JOSE MARIA VIESCA
SANTIAGO DE VALLE,
Secretario.

government, or deposited in the archives of the colony.

Art. 27. All public instruments of possession and attested copies, signed by the commissioner, shall be attested by two assisting witnesses.

Art. 28. The commissioner shall be personally responsible for all acts and provisions by him effected or performed in violation of the colonization law and these instructions.

Saltillo, September 4th, 1827.

JOSE A TIJERINA,
Secretary by substitution.
MIGUEL ARCINEAGA,
Dep. Sec'y.

Additional evidence.

The commissioner shall not grant any land of himself, nor give possession upon those traced out for empresas, so long as these are not concluded, without the knowledge and consent of the empresario himself, even should the said grant be authorized by the executive.

Note.

On the 15th of May, 1828, Congress issued the decree No. 62, regulating the pay to be made to the commissioners for their services, and on the 10th of April, of the current year, the said Congress issued the decree number 128, which in part reforms and explains these instructions; both which laws shall be borne in mind by every commissioner for the distribution of lands.

Leona Vicario, 25th of April, 1830.

JOSE MARIA VIESCA
SANTIAGO DE VALLE,
Secretary.

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An act entitled "An act to reduce into one act, and to amend the several acts relating to the establishment of a general land office."

Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That there shall be, and is hereby, established a general land office for the Republic of Texas, to be located at the seat of government, or at such place as may hereafter be designated by law, the chief officer of which shall be called the commissioner of the general land office, which said officer shall be appointed by the President, by and with the advice and consent of the Senate; shall enter into bond, with three or more securities, payable to the President, or his successors in office, in the penalty of fifty thousand dollars, conditioned for the faithful performance of the duties of his office; said bond and securities to be approved by the President and Senate; which bond shall be filed in the office of the Secretary of State, and shall hold his office for the term of three years: Provided, the provisions of this section shall not affect the present incumbent of that office, except so far as relates to his giving bond and security, and holding his office for three years from the date of his appointment; and the said commissioner of the general land office shall receive a salary of three thousand dollars per annum, payable quarterly.

Sec. 2. Be it further enacted, That the commissioner of the general land office be, and he is hereby, authorized to appoint a chief clerk, which said clerk shall receive a salary of sixteen hundred dollars per annum, and two assistant clerks, who shall receive a salary of twelve hundred dollars each per annum, payable quarterly.

Sec. 3. Be it further enacted, That the said chief clerk shall enter into bond, with three or more securities, to be approved by the commissioner of the general land office, in the sum of twenty thousand dollars, payable to the president or his successors in office, conditioned for the faithful performance of the duties of his office, (which bond shall be deposited in the office of the secretary of state,) who, in the case of the absence of the commissioner of the general land office, or his inability to attend to the duties thereof, shall perform all the duties appertaining to said office.

Sec. 4. Be it further enacted, That all officers appointed, or to be appointed, under the provisions of this act, shall, before entering on the duties of their office, take and subscribe the following oath, to wit, "I, A. B., do solemnly swear, that I will faithfully discharge the duties of my office, without favor or partiality, so help me God;" which said oath shall be transmitted to, and filed in the office of, the secretary of state.

Sec. 5. Be it further enacted, That the commissioner of the general land office shall cause to be provided a seal of office, which seal shall not be changed except by law; and certified copies of any records, books, or papers belonging to said office, under the signature of the said commissioner or chief clerk, with the seal of office thereunto attached,

shall be competent evidence in all cases where the originals could be evidence.

Sec. 6. Be it further enacted, That the commissioner of the general land office be entitled to, and shall keep charge of the seal; and also that he be, and is hereby, entitled to, and shall have custody and control of all books, records, papers, and original documents appertaining to the titles of lands, heretofore, and by the provisions of the law, denominated archives; and that the said books, records, papers, and original documents shall become and be deemed the books and papers of said office.

Sec. 7. Be it further enacted, That all patents issuing from the land office shall be in the name of the Republic of Texas, and under the seal of said office; shall be signed by the President of the Republic, and countersigned by the commissioner of the general land office, or by the chief clerk thereof.

Sec. 8. Be it further enacted, That no person appointed to an office instituted by this act, or employed in any such office, shall directly or indirectly be concerned in the purchase of any right, title, or interest, in any public land, either in his own name, right, or interest for any other person, or in the name or right of any other person, in trust for himself; nor shall take or receive any fee or emolument for negotiating or transacting the business of said office, other than those fees allowed by law. Any person offending in the premises, against the prohibitions of this act, shall, on conviction thereof before the district court, be removed from office, and fined in any sum not less than five hundred dollars, and shall forfeit all the land he owns in the Republic, and never after be allowed to hold any office of trust or profit in this Republic.

Sec. 9. Be it further enacted, That there shall be elected, by joint vote of both houses of Congress, for each county, a county surveyor, who shall reside at the county seat, and whose duty it shall be to receive and examine all field notes of surveys which have been, or may hereafter be, made in said county, and upon which patents are to be obtained, and shall certify the same, under his hand, to the commissioner of the general land office, after having recorded the same in a book to be kept by him for that purpose; and shall immediately return the same to the president of the board of land commissioners of said county. He shall, before entering upon the duties of his office, enter into bond, with three or more securities, to be approved by the board of land commissioners of the county, in the sum of ten thousand dollars, payable to [the] President or his successors in office, conditioned for the faithful performance of his duties; which said bond shall be recorded in the clerk's office of said county, and the original transmitted to the office of [the] secretary of state; and the said surveyor shall hold his office for three years, and be re-eligible. He shall be entitled to charge on all field notes and plats presented to him for inspection: for every set of field notes and plat of a league and labor of land, five dollars; for one-third of a league, four dollars; and for every less quantity three dollars. His books shall be open at all times for inspection, and

he shall be allowed thirty-seven and a half cents for each search. He shall appoint as many deputy surveyors as he may deem necessary for the county, and shall administer to them the oath of office, and take the bond hereinafter prescribed, and shall furnish them such instructions as may be furnished to him, from time to time, by the commissioner of the general land office; and such deputy surveyor, before he enters upon the duties of his office, shall enter into bond, with two or more securities, to be approved by the county surveyor, in the sum of five thousand dollars, payable to the president and his successors in office, conditioned for the faithful performance of the duties of his office; and for such appointment of a deputy surveyor, the county surveyor shall be allowed to charge and receive from the person so appointed the sum of five dollars.

Sec. 10. Be it further enacted, That it shall be the duty of each deputy surveyor to administer an oath to each individual employed by him as chain-carrier or marker, for the faithful performance of his duties as such, in accordance with the instructions given him; and no African or Indian, or descendant of either, or any person under the age of sixteen years, shall be employed in either of the above capacities. And further, it shall be the duty of said surveyors to subscribe the name of each of the chain-carriers to his field notes, previous to his returning the same to the county surveyor. He shall also state, to the best of his knowledge or belief, the number of labors of irrigable lands, the number of labors of temporal or arable lands, and the number of labors of pasture lands in each survey, for that class of claimants who are entitled to land under the constitution and colonization laws, which shall be plainly written out in the field notes, and also inserted in each patent; and for all such surveys he shall charge and receive three dollars for each English lineal mile actually run.

Sec. 11. Be it further enacted, That there shall be elected, by joint vote of both houses of Congress, a commissioner, who shall be president of the board, and two associate commissioners for each and every county, who shall compose and constitute a board of commissioners for their respective counties, to be styled a "board of land commissioners," whose duty it shall be to investigate all claims on this government for head rights to lands; and they are hereby authorized and required to grant, to any person or persons, a certificate of their claim or claims, upon such proof being made to them, by the party or parties claiming, as is herein required, setting forth in said certificate the amount of land the claimant is entitled to, upon what conditions, and the time when he, she, or they, emigrated to this country. The presidents of the boards of land commissioners shall be receivers of public moneys for their respective counties, and shall enter into bond, with good and sufficient security, to be approved by the county court, or, if there be no county court, the board of land commissioners, in the sum of twenty thousand dollars, payable to the President of the Republic of Texas, or his successors in office, and conditioned for the payment of all sums which may be received by him on account of the public lands, to the secretary of the treasury for the use of the Republic; which bond shall be recorded by the clerk of the county court, and the original transmit-

ted to the office of the secretary of state; and for all public moneys which he may receive and pay over, he shall be allowed to charge and receive two per cent.

Sec 12. Be it further enacted, That every person who shall claim a title to land in this government by virtue of the colonization laws, or by residence in the country at the declaration of independence, shall be required to take and subscribe the following oath: "I do solemnly swear that I was a resident citizen of Texas at the date of the declaration of independence; that I did not leave the country, during the campaign of the spring of 1836, to avoid a participation in the struggle; that I did not refuse to participate in the war, and that I did not aid or assist the enemy; that I have not previously received a title to my quantum of land, and that I conceive myself justly entitled, under the constitution and laws, to the quantity of land for which I now apply." They shall also be required to prove, by two or more good and creditable witnesses as the commissioners may require, that they were actually citizens of Texas at the date of the declaration of independence, and have continued so to the present time; and they shall also be required to prove, in like manner, whether they were married or single at the time of the declaration of independence, and what amount of land they were entitled to under the law. Provided, widows and orphans shall not be required to take the oath herein prescribed. And all persons claiming a grant to land of this government, by inheritance or by purchase, shall prove in the same manner as above stated in this act, widows, orphans, or their legal representatives not excepted, that the person whose estate they claim is entitled to a grant to land of this government, by the laws of the country, or that the person of whom they purchased is actually entitled to said grant to lands of this government; and no purchaser of a head right shall be entitled to receive a grant, either as assignee or in the name of the original claimant, unless proof be also made that the person represented as entitled to the grant is actually a resident of the Republic at the time the application for the grant is made; and all orders of survey of head rights, procured under the colonization laws previous to the declaration of independence, shall be submitted to the examination of the land commissioners; and the holders of the same, whether they be original claimants, their heirs, or assignees, shall be subjected to the same formalities and requisitions in procuring said head rights as [are] pointed out for the other individuals in this law.

Sec. 13. Be it further enacted, That any person claiming the benefits of any particular colonization law of Coahuila and Texas, during their existence, fixing the prices to be paid for lands by the colonists, shall prove by at least two respectable witnesses, that he or she was actually residents of Texas during the time said law was in force; which proof so made before said board of land commissioners, shall entitle the claimant to have his or her land at the price fixed upon by said colonization law, which was in force at the date of said claimant's emigration to this country

Sec. 14. Be it further enacted, That there shall also be elected for the several counties a clerk, by joint vote of both houses of Congress,

who shall keep in a well bound book, to be kept by him for that purpose, a correct account of all the transactions of the board of land commissioners, the name of every person to whom a certificate shall be given, the amount of land granted to each person, the time of their emigration to the country, and the name or names of the witness or witnesses by whom the claimants severally proved their claims; and the said clerk shall, at the end of every month, forward to the commissioner of the general land office, a correct list of the names to whom certificates had been given, the amount of land granted to each individual, and the date of the claimant's emigration to the country; and the said commissioner of the general land office, shall keep a record of all such returns which may be made to his office; and the said clerk shall, before entering upon the duties of his office, give a bond with good security, to be approved by the board of land commissioners, for the sum of five thousand dollars, payable to the President or his successors in office, conditioned for the faithful performance of the duties of his office as clerk and register, and the safe keeping of the records thereof.

Sec. 15. Be it further enacted, That every certificate which may be issued by the authority of this act, shall be signed by the board of land commissioners, and attested by the clerk, and for every such certificate so issued, the party claimants shall pay the sum of five dollars, one half of which shall go to the clerk, and the other be equally divided between the quorum of the board actually presiding. And it is hereby made the duty of said board; and they are required to meet at the court houses of their respective counties on every other Thursday, then and there to transact the duties required of them by this act, and shall remain in session so long as may be necessary for the transaction of the business before the board; for which services they shall be entitled to demand and receive the fees herein allowed, and no more. Provided, that after the land offices shall have been open three months, the said board shall not be required to meet only on the first Thursday of each month, and if that day should fall on a regular court week, so as to interfere with it, then they shall meet on the next Thursday thereafter. And further provided, that a majority of said board shall form a quorum to transact the duties herein required of them.

Sec. 16. Be it further enacted, That the decision of a majority of said board of commissioners, shall be necessary to entitle any person to a certificate of their claims; but if a majority of said board should decide that any claimant who presents himself or herself before them for a certificate of claims, is not entitled to the amount of land which they claim, said claimant may take an appeal from their decision to the next district court for the county in which said claimant may live, citing the board of commissioners to appear as defendants, where it shall be tried; and in all such cases the district attorney shall represent the interest of the republic, for which services he shall be allowed a tax of ten dollars on every such case, to be paid by the appellant, together with all other costs of suit in case he or she fails to obtain a verdict in his or her favor. But if the appellant should obtain a verdict for the amount of land which he or she claims, the costs of suit shall be paid by the re-

public, when the commissioners shall issue a certificate in accordance with such decision.

Sec. 17. Be it further enacted, That any certificate of claim to land, which has been, or may be, obtained in the manner or form herein prescribed, shall be sufficient evidence to authorize any lawful surveyor to survey for any person holding such certificates any lands which he may point out, agreeably to all the laws which do now, or may hereafter, exist on that subject. Provided also, that where more than one application is made for the same tract of land to be surveyed, the settler or occupant shall have the preference, if these claims be otherwise equal. Provided, that no location or improvement made since the declaration of independence, by persons who have since that time arrived in the country, shall be regarded when they come in conflict with the claims of those who were here at the declaration of independence; but those individuals entitled to six months' preference, shall have the right of locating their lands upon any vacant lands of the republic, without regard to any improvements made by individuals who have arrived in Texas since the declaration of independence. In all other cases, or in case there be more occupants than one, the conflicting claims shall be summarily tried by the nearest justice of the peace, and six disinterested jurors summoned for that purpose; and upon their decision the surveyor shall grant to the successful party the field notes of the tract of land, giving in all cases the preference to the oldest occupant and settler. Provided, in all cases, that the claimant shall apply for such certificate in the county in which he or she may reside at the date of the passage of this act; and provided, that persons claiming land by inheritance or assignment, shall apply for such certificate in the county where the testator died, or where the assignor lived at the time of making such transfer.

Sec. 18. Be it further enacted, That when two or more persons cannot agree to a division line of any land which has never been surveyed agreeably to law, it shall be lawful for either party to apply to any justice of the county or territory in which the land lies, or if there be no justice of the peace in the county or territory, then to the nearest justice in any county or territory, and make oath that he has tried and has not been able to settle the dispute between himself and one or more other persons (naming them) concerning a division line; and the said justice shall issue a warrant to any lawful officer to summons the party or parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may choose to have summoned to give evidence on a certain day, naming at what time and place. The justice shall also meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute, and shall also determine who shall pay the cost of suit. Each juror in such case shall be allowed two dollars per day for such services; the other officers such fees as have been already established by law for other similar services: provided, that if the land in dispute shall be on a county line, it shall be lawful for a justice of either county in which part of the land may be, to act in such case; and in case either party be dissatisfied with the de-

cision, they shall have the right of appeal to the district court within ten days, upon giving bond and security for the costs.

Sec. 19. Be it further enacted, That it shall be the duty of the surveyor in all cases before he runs a division line between two settlers claiming lands, to notify the party or parties interested, before running the same, in writing. And any survey which may be made contrary to the true intent and meaning of this section of this act, shall not be a lawful one, and the field notes of every survey which shall be returned to any land office hereafter for the purpose of getting a title for the same, shall be under oath of the surveyor, who shall swear it was executed according to law, and shall also swear the same was made prior to the closing of the land office by the consultation, or subsequent to the opening of the same by this act; and if made prior to the closing of the land office by the consultation, the same shall also be proven by at least two respectable witnesses.

Sec. 20. Be it further enacted, That the commissioner of the general land office is hereby authorized to grant to all persons holding an order of survey legally obtained previous to the closing of the land offices in one thousand eight hundred and thirty-five, and having a survey which was made agreeably to said order, and in conformity to law in all respects, a patent for the same, upon the holder presenting a certificate of some board of land commissioners that he is entitled to the quantity of land surveyed, and making such proof to them as is required by law, and upon his paying the several fees as the laws require.

Sec. 21. Be it further enacted, That all lands surveyed for individuals lying on navigable water-courses shall front one half the square on the water-course, and the line running at right angles with the general course of the stream, if circumstances or lines previously surveyed under the laws will permit; and all others not on navigable water-courses shall be square, if previous lines will admit; and under no circumstances shall any one grant be located in more than two surveys.

Sec. 22. Be it further enacted, That each and every individual under the age of seventeen, who have volunteered in the service of their country, and who have received honorable discharges, shall be entitled to the same quantity of land as a head right that they would be though they were twenty-one years of age, and upon the same conditions.

Sec. 23. Be it further enacted, That all single men who were in the Republic at the date of the declaration of independence, and entitled under the constitution to one-third of a league of land, and who have since married, or may marry within the next twelve months, shall be entitled to the additional quantity of two-thirds of a league and a labor of land; provided, that the benefits of this section shall only extend to those who have contributed to the support and defence of the country; and provided, this additional quantity shall not be allowed to any whose wife has received a league of land of this Government.

Sec. 24. Be it further enacted, That whereas many persons have received titles under the colonization laws, as colonists; from the different commissioners of the country, and whereas many conditions were

by law attached to said titles, that all such conditions be, and are hereby, cancelled, and the titles to all such lands are hereby ratified and confirmed; provided, that such persons shall pay, or cause to be paid, to the president of the board of land commissioners of the county where such land may be situated, within six months after the opening of the land office, all money which may be due or owing on the same; provided, that the condition of remaining in the country, and the provision prohibiting the sale to aliens, shall not be repealed by this law; and further provided, that no title by this act shall be confirmed which was illegal or invalid ab initio; and further provided, that this act shall not extend to any grantee or individual for a greater amount of land than one league and one labor.

Sec. 25. Be it further enacted, That no person shall by virtue of an improvement have a right to claim more than one league and one labor of land, and that improvement shall consist in the clearing and fencing, in a farm like manner, at least four acres; and this privilege shall not extend to any person or persons who have previously received a title to the quantum of land to which they were entitled, nor to any person or persons entitled to a grant of land by purchase.

Sec. 26. Be it further enacted, That it is hereby declared that all empresario's contracts having ceased on the day of the declaration of independence, all the vacant lands of Texas are the property of this Republic, subject alone to the disposition of the government of the same.

Sec. 27. Be it further enacted, That in order to settle the claims of empresarios, each and every one of the same are hereby authorized to institute a suit against the President of the Republic of Texas, which suit or suits shall be tried in the county in which is situated the seat of government, and shall be tried as all other land suits are required to be tried. And should any empresario, who should thus sue, fail to establish the claim for which he sues, he shall pay all the costs of said suit; provided, that neither aliens nor the assignees of aliens shall be entitled to the benefits of this act.

Sec. 28. Be it further enacted, That it shall be the duty of the attorney general to attend to all such suits in behalf of the Republic of Texas; and the President is hereby authorized to employ such additional counsel as in his opinion he may deem proper, the expenses of which shall not exceed one thousand dollars in each case.

Sec. 29. Be it further enacted, That every volunteer who arrived in this Republic after the second day of March, 1836, and before the 1st of August, 1836, and has received, or may hereafter receive, an honorable discharge, and has taken the oath prescribed by the constitution, or who may have died, shall receive the quantity of land by this act secured to original colonists. Provided, that the priority of location mentioned in the thirty-eighth section of this act, shall be adhered to; and further provided, that none but the person who served, or his heirs, shall be entitled to the benefit of this provision; and all augmentation shall accrue to the original claimants, and not to the person to whom it may have been transferred; provided, no person who is entitled to the

benefit of the first part of this section of this act, shall be entitled to the benefits of the latter part of the same; every person who has arrived in this Republic since the declaration of independence and previous to the first of October, 1837, who is a free white person and the head of a family, and who actually resides within the Government with his family, shall be entitled to a conditional grant of twelve hundred and eighty acres of land, by paying the fees of office and of surveying. The conditions of said grant shall be, that both grantee and his or her family shall remain and reside within this Republic, and do and perform all the duties required of other like citizens for the term of three years; after which time he or she shall receive an unconditional deed for said land; and in no case, whatever, shall a grant of that description be made, unless it be satisfactorily proven that all the conditions and provisions of the law have been complied with. And all single free white men, who have emigrated to this Republic since the declaration of independence, and previous to the first of October, 1837, shall be entitled to six hundred and forty acres of land; and if they married before the 1st day of October, 1837, they shall be entitled to an additional quantity of six hundred and forty acres of land upon the same conditions as above named; and all laws contrary to the meaning and provisions of this section are hereby repealed.

Sec. 30. Be it further enacted, That all officers and soldiers who engaged in the service of Texas previous to the 1st of March, 1837, whose families are now here, or may arrive within twelve months from the date of their discharges, shall be entitled to the same quantity of land as they would have been entitled to if their families had emigrated with them to the country.

Sec. 31. Be it further enacted, That the board of land commissioners are hereby authorized to grant to persons claiming lands of this Government under the 29th section of this act, a certificate of their claims, upon the same proof being made to them as is required of other claimants, stating in said certificate the amount of land to which the claimant is by law entitled; at what time he or she arrived in this Republic.

Sec. 32. Be it further enacted, That the commissioner of the general land office shall, when required by the President of the Republic, or either house of Congress, make a plat of any land surveyed under the authority of the Government, and give such information respecting the public lands, and concerning the business of his office, as shall be legally required.

Sec. 33. Be it further enacted, That the commissioner of the general land office shall be, and he is hereby, authorized to appoint a translator, who shall undergo an examination as to his qualifications, and shall understand the Castillian and English languages, and shall, before he enters upon the duties of his office, take and subscribe the oath of office herein prescribed, shall give bond, with two or more good and sufficient securities, in the sum of ten thousand dollars, to be approved by the secretary of state, and shall be payable to the President or his successors in office, conditioned for the faithful performance of his

duties, and said translator shall hold his office for the term of three years, and shall be allowed a salary of two thousand dollars per annum, payable quarterly.

Sec. 34. Be it further enacted, That it shall be the duty of said translator to translate into the English language and record in a book, to be kept by him for that purpose, all the laws and public contracts relative to the titles of land which are written in the Castillian language; and also to translate and record, in like manner, all original titles, which are written in the Castillian language which may be on file in the office of the commissioner of the general land office.

Sec. 35. Be it further enacted, That should a vacancy occur during the recess of Congress, by death, resignation, or otherwise, of any member of either of the boards of land commissioners, or of the clerk of either of the boards, or of any county surveyor, it shall be the duty of the board of land commissioners to notify such vacancy to the commissioner of the general land office forthwith, and to recommend some person suitably qualified to fill such vacancy; whereupon it shall be the duty of the commissioner of the general land office to fill said vacancy by an appointment, and report the same to the Congress immediately on its next session, which officer shall continue to perform the duties of the office to which he is appointed, agreeably to the provisions of this act, until his successor is duly qualified.

Sec. 36. Be it further enacted, That so soon as the certified copy of the field notes and plot of any survey shall be made and transmitted to the president of the board of land commissioners for the county where the land or a part of it lies, and the amount of money which is fixed by law as the price of such land be paid, the president of the board of land commissioners shall endorse a receipt for such payment on the back of said field notes, for which he shall give duplicate receipts, and transmit the field notes to the commissioner of the general land office, who shall forthwith make out, in due form, a patent for said land, and record the same in a book to be kept for that purpose, and transmit the original to the president of the board of land commissioners for the county where the land lies, who shall enter a minute of said patent on his books, and deliver the same to the party who is entitled to it, or some one authorized by him to receive the same, taking a receipt therefor; and the said patentees in all cases shall pay, as government fees, the prices fixed by the colonization laws of Coahuila and Texas, in force at the time they emigrated to this country. And if they emigrated subsequently to the 2d day of May, 1835, and previous to the declaration of independence, they shall be required to pay the amount fixed by law, passed by the Congress of the State of Coahuila and Texas on the above date.

Sec. 37. Be it further enacted, That the President of the Republic be, and he is hereby, authorized to contract for the surveying, and cause to be surveyed at the expense of this government, a sufficient quantity of land to satisfy the holders of all land script that may have been issued and sold by this government, agreeably to the law in all respects. And the Secretary of the Treasury is hereby authorized to

pay, out of any money in the treasury not otherwise appropriated, the expenses which may occur in completing such surveys: Provided, it shall not exceed three dollars for each English lineal mile actually run.

Sec. 38. Be it further enacted, That where two or more locations have heretofore been made on, and titles granted for, the same piece of land, or where the boundaries of different titled surveys conflict with each other, the party who has his title or order of survey of subsequent date may, on proper showing of all the facts, and certificate of a legal surveyor, to the board of land commissioners of the county in which the land lies, have his former title cancelled by said board, and a new order issued for his quantum of land, or so much thereof as shall be affected by the conflicting lines mentioned in this section.

Sec. 39. Be it further enacted, That the several land offices contemplated and established by this act shall commence and go into operation on the first Thursday of February next: Provided, however, that the operations of the land office, in the county of Red river, shall not extend to any portion in the territory near the supposed boundary line between this and the United States Government of the North: And provided, also, that should any person obtain a certificate for land from said board of land commissioners for the county of Red river, who at the date of the passage of this act shall reside east of the boundary line hereafter to be run between Texas and the United States, said certificate shall be void, and their operations shall be confined to the granting and completing of land titles to all those who, by the existing and previous laws, have acquired a preference in the first location; of this class are all citizens who were residing in Texas on the day of the declaration of independence, and those volunteer soldiers who served a tour of duty in the army of Texas previous to that time; for this class of claimants the land office shall be opened and remain six months in operation, granting and completing titles alone to that class of claimants; after which other legal claimants shall be entitled to have their land titles completed as herein provided and directed; and the several boards of land commissioners shall be permitted and allowed to commence receiving applications for lands and hearing testimony on the first Thursday of January next; and in case the country shall be invaded to an extent inducing the President to call out at least one-third of the militia for its defence, the commissioner of the general land office shall have power to close the land offices by proclamation, until such invasion has terminated; and all laws heretofore enacted on the subject of public lands shall be, and they are hereby, repealed.

Sec. 40. Be it further enacted, That each county in the Republic shall be considered and constitute a section, and that each county surveyor be required as soon as practicable, to make out and procure a map of each county, on which plats of all the deeded lands in said county shall be made, so as to make a fair shewing of the same, for which he shall receive compensation by special appropriation hereafter to be made for that purpose.

Sec. 41. Be it further enacted, That audited claims against the Republic of Texas shall be receivable in payment of public dues on lands:

Provided, the benefits of this section shall not extend to any individual for a larger quantity of land than two leagues and two labors; and any one offering to pay for lands in audited paper on the government, shall swear that he has not paid for as much as two leagues and two labors in such paper before, either by himself or his agent, which affidavit shall be filed with the chairman of the board of land commissioners.

Sec. 42. Be it further enacted, That all streams of the average width of thirty feet shall be considered navigable streams within the meaning of this act, so far up as they retain that average width, and that they shall not be crossed by the lines of a survey.

JOSEPH ROWE,
Speaker of the house of representatives.
MIRABEAU B. LAMAR,
President of the senate.

Vetoed by the President, and passed the house of representatives, by a constitutional majority, December 14, 1837.

JOSEPH ROWE,
Speaker of the house of representatives.

Vetoed by the President, and passed the senate, by a unanimous vote, Dec. 14, 1837.

S. H. EVERITT,
President pro. tem. of the senate.

Exhibit J.

12 may 1846

An act to establish a general land office for the State of Texas.

Sec. 1. Be it enacted by the legislature of the State of Texas, That there shall be established a general land office, to be located at the seat of government of the State of Texas, the chief officer of which shall be styled the commissioner of the general land office, whose duties it shall be to superintend, control, and direct the official conduct of all subordinate officers of the general land office, and to execute and perform all acts and things touching or respecting the public land of the State of Texas, or rights of individuals in relation thereto, as may be required of him by law.

Sec. 2. Be it further enacted, That the commissioner of the general land office shall be elected by the joint vote of both houses of the legislature, and shall hold his office for the term of two years from the date of his election.

Sec. 3. Be it further enacted, That the commissioner of the general land office shall appoint, for the transaction of the business of the general land office, one chief clerk, one Spanish clerk, two draughtsmen, and not more than eight assistant clerks. The said chief clerk and Spanish clerk shall each be required to enter into bond, with three or more securities, in the penal sum of twenty thousand dollars, for the faithful discharge of their official duties, payable to the governor of the State of Texas, and his successors in office, for the use of the State; which bond shall be approved by the governor, and filed in the office of the secretary of state.

Sec. 4. Be it further enacted, That in case of the sickness, death, or resignation of the commissioner of the general land office, it shall be lawful for the chief clerk to act and to perform all the duties required of the said commissioner of the general land office.

Sec. 5. Be it further enacted, That the commissioner of the general land office shall, before he enters upon the discharge of the duties of his office, enter into bond, with three or more securities, in the sum of fifty thousand dollars, payable to the governor of the State of Texas, and his successors in office, for the use of the State, conditioned for the faithful discharge of his official duties, and take and subscribe the oath prescribed by the constitution; which bond, after being approved by the governor, shall, together with the affidavit, be filed in the office of the secretary of state.

Sec. 6. Be it further enacted, That the commissioner of the general land office shall procure a seal of office, with the words "General Land Office, the State of Texas," engraved around the margin, and such other device as the governor of the State shall approve; which approval shall be certified and recorded in the office of the secretary of state.

Sec. 7. Be it further enacted, That all patents for lands emanating from the State shall be issued in the name and by the authority of the State, under the seal of the State, and under the seal of the general land office, and shall be signed by the governor, and countersigned by the commissioner of the general land office.

Sec. 8. Be it further enacted, That the several counties of the Republic of Texas, as they existed on the fifteenth day of February, one thousand eight hundred and forty-six, be, and they are hereby, declared land districts of the State of Texas, and be known as follows: district of Austin, district of Bexar, district of Bastrop, district of Brazoria, district of Brazos, district of Bowie, district of Colorado, district of Fayette, district of Fort Bend, district of Fannin, district of Goliad, district of Gonzales, district of Galveston, district of Harris, district of Houston, district of Harrison, district of Jasper, district of Jefferson, district of Jackson, district of Liberty, district of Lamar, district of Montgomery, district of Milam, district of Matagorda, district of Nacogdoches, district of Refugio, district of Robertson, district of Rusk, district of Red River, district of San Patricio, district of San Augustine, district of Sabine, district of Shelby, district of Travis, district of Victoria, and district of Washington.

Sec. 9. Be it further enacted, That no new county created by the legislature shall be made a separate land district, but the same shall remain part of the district from which it shall have been taken: Provided, that there shall be a convenient number of deputy surveyors appointed for each surveyor's district, whose district shall be so well defined to them that there will not occur a conflict in the surveys made by either deputy.

Sec. 10. Be it further enacted, That there shall be further elected, by the qualified electors of each land district, on the day of the first general election of county officers in this State, one district surveyor for each land district, whose term of office shall be two years from the date

of his election, who shall be entitled to the custody of all books, maps, papers, and such other things as belong to the county surveyor's office of the county, which by this act is made a district, upon his entering into bond, with two or more securities, in the penal sum of ten thousand dollars, payable to the governor of the State of Texas, and his successors in office, conditioned for the faithful discharge of the duties of his office; which bond shall be approved by the county courts of their respective counties, and recorded in the office of the clerk of the county court, and filed in the office of the clerk of the district court, and a certified copy thereof may be put in suit in behalf of the State, or any citizen aggrieved by the non-performance of its conditions. He shall also take and subscribe an oath to the following effect: that he will faithfully, and to the best of his skill and ability, discharge the duties of his office in accordance with law; which shall be filed with his bond in the office of the clerk of the district court of their respective counties.

Sec. 11. Be it further enacted, That the district surveyors elected under this act shall be governed, in the discharge of their official duties, by the provisions of this act, and the laws heretofore regulating the duties of county surveyor, where the same does not conflict with this act; and shall be subject to removal from office, by indictment in the district court of their respective counties, for any abuse, negligence, or failure in the discharge of their official duties; and upon their removal from office, or at the expiration of their term of office, shall deliver to their successors all records, books, papers, maps, and other things appertaining to the office.

Sec. 12. Be it further enacted, That the commissioner of the general land office shall give information to the governor of this State, or either branch of the legislature, concerning the public lands or the general land office, from time to time, as may be required.

Sec. 13. Be it further enacted, That this act take effect from and after its passage.

Approved 12th May, A. D. 1846.

Exhibit K.

Demand for survey.

To John De Young, district surveyor of the district of Galveston, and Samuel P. Browne, deputy surveyor of the same district:

You will please survey, and cause to be surveyed for me, without delay, upon, and by virtue of, a certificate granted to Colin T. McRae by the board of land commissioners for the county of San Augustine, numbered 604, and bearing date the twenty-first day of June, 1838, for one league and one labor of land, I being the lawful holder as well as the legal owner of the said certificate, and being thereby entitled by law to demand and have such survey made for me, a tract or parcel of the vacant public land of the State of Texas, pointed out by me for your direction, in the description and designation following:

Beginning at the southeast corner of a survey made for William H. Jack, on the west side of Galveston bay, in the said county of Galves-

ton; thence, running south 70° east, to the line of a survey made for J. Spillman; thence, along said line, and the line of a survey made for J. Chrisman, as assignee of E. Stepp, for quantity; thence, in a line parallel to the first, the length of said first line; thence, to the beginning; so that the same may contain one league and one labor of vacant land. And to insure your prompt attention to this matter, I herewith present to you, together with this written demand, the original certificate above described for your inspection.

Witness my hand, this twenty-ninth day of June, A. D. 1847.

(Signed) THOS. M. LEAGUE.

Exhibit L.

Joint resolution respecting county surveyors.

Resolved by the senate and house of representatives of the Republic of Texas in Congress assembled, That whenever it shall so happen that the amount of surveying to be done (in any one county) is not more than can be performed by one surveyor, which fact shall be determined by the board of land commissioners, then, and in that case, the county surveyor for said county shall be allowed to perform the duties of a practical surveyor, and perform all the duties required of the deputy surveyors to be appointed under a provision of an act to establish a general land office.

JOSEPH ROWE,
Speaker of the house of representatives.

MIRABEAU B. LAMAR,
President of the senate.

Approved Dec. 29, 1837.

SAM. HOUSTON.

Exhibit M.

An act amending an act supplementary to an act entitled an act to reduce into one act and to amend the several acts relating to the establishment of a general land office.

Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That the chief justices of the counties, the associate justices, and the county clerks of each and every county of this Republic, shall be, and they are hereby, constituted boards of land commissioners for their respective counties; the chief justice shall be the president, and the county clerks shall be the clerks to said boards.

Sec. 2. Be it further enacted, That the said boards of land commissioners shall be governed by the same laws, and be entitled to the same emoluments as provided for the government of the boards of land commissioners in the act to which this is a supplement; provided, that the clerk shall receive two dollars, and the balance shall be equally divided between the members of the board present.

Sec. 3. Be it further enacted, That it shall be the duty of the clerks of the present boards of land commissioners to deliver over to the clerks

of the boards contemplated in this act (so soon as they are organized) all the records and papers they may have in their possession relating to the transactions of said board; and the presidents are hereby required to pay over to the secretary of the treasury all moneys they may have received as treasurers to said boards.

Sec. 4. Be it further enacted, That this act shall take effect from and after the second Monday of January, eighteen hundred and thirty-nine, and shall continue in force to the second Monday of January, eighteen hundred and forty, and no longer.

Sec. 5. Be it further enacted, That all laws, and parts of laws, conflicting with the provisions of this act, be, and the same are hereby, repealed.

JOHN M. HANSFORD,
Speaker of the house of representatives.

DAVID G. BURNET,
President of the senate.

Approved January 26, 1839.

MIRABEAU B. LAMAR.

Exhibit N. 765 1840

An act to provide for the return of surveys, for the collection of government dues on lands, and for other purposes.

Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That all surveys heretofore made shall be returned as required by law, and with the government dues paid thereon, to the general land office by the first day of January next; and all surveys hereafter made, shall be returned as above, within nine months from the date of survey; otherwise they shall be null and void, and subject to re-location.

Sec. 2. Be it further enacted, That the chief justice of the several counties shall continue to be the receiver of government dues upon lands in their several counties; and it shall be their duty to make quarterly returns to the secretary of the treasury in such manner and form as required by said secretary; and upon any receiver failing to make return as required, for two months after the expiration of any quarter, it shall be the duty of said secretary, by public proclamation in some newspaper at the seat of government, to forbid all persons from paying government dues to such receiver; and the district attorney shall institute suit in the name of the Republic against such defaulting receiver.

Sec. 3. Be it further enacted, That upon receiving the government dues upon field notes made out as required by law, it shall be the duty of the receiver to transmit forthwith by mail, or some other safe conveyance, to the commissioner of the general land office said field notes; unless the person interested therein shall prefer to convey the same to the general land office; in which case the receiver or county surveyor shall take a receipt therefor, and transmit all such receipts monthly to the commissioner of the general land office, whose duty it shall be to keep a record of the day upon which all such returns were made.

Sec. 4. Be it further enacted, That the several receivers shall be entitled to receive as compensation for their services five per cent. upon the amount of dues by them collected, when paid over faithfully as required by this act; but when they make a default they shall not be entitled to any compensation.

Sec. 5. Be it further enacted, That it shall be the duty of all deputy surveyors to make returns of every survey to the county surveyor for his approval; and any surveyor neglecting so to do, shall be fined in a sum not less than one, nor more than five, thousand dollars, for the use of the county, and shall, moreover, be liable for damages at the suit of any person thereby aggrieved.

Sec. 6. Be it further enacted, That it shall be the duty of the several county surveyors upon the return of the field notes of any surveyor in his county, to examine the same, and if found to be correct, to certify the same as required by law, and deliver them within ten days after application therefor to the chief justice, or to any person interested therein, after having recorded the same in his office; and any surveyor neglecting or refusing so to do, or failing or refusing to survey any lands the holder of a legal certificate may point out within a reasonable time, or surveying such lands so designated for any other person, upon a certificate subsequently presented, shall be liable for all damages sustained by any person on account of such default.

Sec. 7. Be it further enacted, That the several chief justices are hereby required to give special bond and security for the sum of twenty thousand dollars, payable to the President of the Republic of Texas, or his successors in office, conditioned for the faithful performance of their duties as receivers of public dues; which bond shall be approved by the associate justices of the county, or, in their absence, by the district court clerk, and after being recorded in the office of the county clerk, shall be forwarded to the secretary of the treasury.

Sec. 8. Be it further enacted, That the term of office of the several county surveyors shall expire on the first Monday of September next, at which time an election shall be held in the several counties for county surveyor, in which said election all persons qualified to vote for members of Congress shall be entitled to a vote; and the person receiving the highest number of votes, after giving bond, and being otherwise qualified as required by law, shall proceed to discharge the duties of the office for the term of two years, or until a successor is qualified.

Sec. 9. Be it further enacted, That after the first election shall take place under the provisions of this act, the regular term of office for county surveyor shall be two years.

Sec. 10. Be it further enacted, That should any deputy surveyor, surveying any lands for which there has not been a certificate deposited, either in his hands, or in the hands of the county surveyor, and after making such survey sell or otherwise dispose of such field notes, so that such survey be considered a legal one, shall upon conviction thereof before any district court, be fined in a sum not less than five

hundred nor more than one thousand dollars, and be dismissed from office.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

Exhibit O. 15 Jany 1841

An act defining the mode by which the holders of conditional certificates shall establish the same.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That there shall be established in each county of the Republic of Texas a tribunal with authority to grant unconditional certificates to the holders of conditional certificates obtained by virtue of the twenty-ninth section of law, entitled "an act to reduce into one act and to amend the several acts relating to the establishment of a general land office," passed December the 14th, one thousand eight hundred and thirty-seven, and also by virtue of the act entitled "an act to extend to late emigrants, or those who may emigrate within a specified time, a donation of land," approved January the fourth, one thousand eight hundred and thirty-nine.

Sec. 2. Be it further enacted, That the chief justice and the two associate justices of the county court shall constitute the tribunal mentioned in the first section of this act.

Sec. 3. Be it further enacted, That any individual entitled to the privileges mentioned in the first section, and who is desirous of obtaining an unconditional certificate, shall present to the tribunal herein established the conditional certificate of the board, created under the land laws of one thousand eight hundred and thirty-seven and one thousand eight hundred and thirty-nine, and shall personally appear and take the following oath: "I do solemnly swear that I have been an actual citizen of the Republic for the term of three years; that I have done and performed the duties required of me as a citizen, and that I am a single (or married) man," as the case may be, and shall further prove by two respectable witnesses that the facts deposed are true: Provided, that in no case shall the evidence of witnesses be made, save by being personally present before the tribunal hereby established: And further provided, that the above oath shall not be exacted from widows, legal heirs, executors, or administrators of any one entitled to the benefit of this law, who died a citizen of this Republic.

Sec. 4. Be it further enacted, That it shall be the duty of the clerk of the county court to act as clerk of the tribunal aforesaid; and upon such proof being made as herein required, the applicant shall receive an unconditional certificate, to be signed by a majority of the tribunal, and attested by the seal and signature of the clerk of the county court.

Sec. 5. Be it further enacted, That the clerk shall keep a regular record of all the certificates issued, the date of the issuance, and the names of the witnesses; and shall quarterly forward to the office of the commissioner of the general land office an abstract of the certificates issued, with the names of the applicants and witnesses, and the numbers and dates.

Sec. 6. Be it further enacted, That the tribunal herein established shall meet at the county seat on the first Monday of each month; and that each applicant shall for a certificate pay the sum of five dollars, in Texas treasury notes, to the county clerk, which sum shall be equally divided amongst the members signing the certificate, and the clerk.

Sec. 7. Be it further enacted, That should any individual have his claim rejected, he shall have the right of appeal to the district court of the county wherein he applied, and it shall be the duty of the district attorney to attend to the appeal in behalf of the tribunal; should the appellant gain a verdict in his favor, the tribunal shall issue a certificate as to other claimants, and the Republic shall be taxed with the costs; if the appellant fails, he shall pay the costs; in all cases where the plaintiff fails to establish his suit, the sum of ten dollars shall be paid to the said district attorney by said plaintiff: Provided, that the application for a certificate may be made either in the county where the party resided at the passage of this act, or where he obtained his conditional certificate.

Sec. 8. Be it further enacted, That in all cases where the original certificate cannot be produced, from the fact of its being in the hands of a county or deputy surveyor, or in the office of the commissioner of the general land office, it shall be lawful for the tribunal to permit the applicant to produce a certificate under the seal and signature of the clerk of the county court where the conditional certificate was obtained, that such a certificate was issued with the number and date.

Sec. 9. Be it further enacted, That where any conditional certificate has been rejected by the board of travelling commissioners in consequence of the board which granted the same having allowed a larger quantity of land than the party applying for the same was entitled to, the board to be appointed under this law shall be authorized to grant another certificate to such party, for the quantity of land to which he is justly entitled: Provided, that the party applying for such certificate shall return to the board the original certificate which was granted him to be cancelled; and in all cases where the said party claimants have heretofore had their lands located and surveyed in good faith, in accordance with law, they shall have the preference right of locating the same lands, or so much thereof as they may be entitled by virtue of the certificate granted them, the said party, by the tribunal established by this act.

Sec. 10. Be it further enacted, That the tribunal herein created shall grant to appellants of the district court, under the sixteenth section of the land law, passed December fourteenth, one thousand eight hundred and thirty-seven, upon the final judgment of the district court in appellant's favor, where appeals have not been taken to the Supreme Court in the time prescribed by law, the certificate which the appellant would have been entitled to receive from the board created by law.

Sec. 11. Be it further enacted, That it shall be the duty of the commissioner of the general land office to grant to the holders of all unconditional certificates, issued by the tribunal herein created, an unconditional patent for the amount of land to which each applicant may be entitled, to receive upon payment of fees of office.

Sec. 12 Be it further enacted, That the chief justice and one of the associate justices may constitute a quorum for business.

Sec. 13. Be it further enacted, That all those volunteers who arrived in this Republic from the second of March, one thousand eight hundred and thirty-six, to the first of August, one thousand eight hundred and thirty-six, as mentioned in the twenty-ninth section of the land law of one thousand eight hundred and thirty-seven, shall be exempted from the conditions as mentioned in the same for the second and third class of claimants.

Sec. 14. Be it further enacted, That this tribunal shall have power to issue certificates to all those of the second or third class of claimants who have not received their certificates from the previous boards of land commissioners, upon their making the same proof as heretofore required.

Sec. 15. Be it further enacted, That the boards or tribunals herein created shall have power to grant original or conditional certificates of the second or third class until the first of October, one thousand eight hundred and forty-one, and no longer; and no unconditional certificate shall be issued to any original or conditional certificate obtained from the tribunal herein created until two years shall have expired from the time of obtaining said original or conditional certificates; and that, when the applicant has resided three years within the Republic, he shall be entitled to an unconditional certificate.

Sec. 16. Be it further enacted, That, should any certificate issue contrary to the provisions of this act, they shall be, and are hereby declared to be, null and void; and the members of the board, granting said illegal certificate, upon conviction of intentional fraud, shall be deemed guilty of a high misdemeanor; and, on being convicted thereof before the district court, shall be fined in a sum not less than two thousand nor more than ten thousand dollars, shall be dismissed from office, and shall be forever thereafter incapable of holding any office of profit, honor, or trust within this Republic.

Sec. 17. Be it further enacted, That this act shall take effect from and after the first Monday of March, one thousand eight hundred and forty-nine.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
ANSON JONES,
President pro tem. of the Senate.

Approved 15th January, 1841.

DAVID G. BURNET.

Exhibit P.

CONSTITUTION.

We, the people of the Republic of Texas, acknowledging with grati-

tude the grace and beneficence of God in permitting us to make a choice of our from of government, do, in accordance with the provisions of the joint resolution for annexing Texas to the United States, approved March 1st, one thousand eight hundred and forty-five, ordain and establish this constitution.

Article 1.

Bill of rights.

That the general, great, and essential principles of liberty and free government may be recognised and established, we declare that—

Section 1. All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit; and they have at all times the unalienable right to alter, reform, or abolish their form of government in such manner as they may think expedient.

Section 2. All freemen, when they form a social compact, have equal rights, and no man or set of men is entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Section 3. No religious test shall ever be required as a qualification to any office or public trust in this State.

Section 4. All men have a natural and indefeasible right to worship God according to the dictates of their own consciences; no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; no human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious societies or mode of worship; but it shall be the duty of the legislature to pass such laws as may be necessary to protect every religious denomination in the peaceful enjoyment of their own mode of public worship.

Section 5. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

Section 6. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 7. The people shall be secure, in their persons, houses, papers, and possessions, from all unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 8. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury; he shall not be compelled to give evidence against himself; he shall have the right of being heard by

himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor; and no person shall be holden to answer for any criminal charge but on indictment or information, except in cases arising in the land or naval forces, or offences against the laws regulating the militia.

Section 9. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or the presumption great; but this provision shall not be so construed as to prohibit bail after indictment, found upon an examination of the evidence by a judge of the supreme or district court, upon the return of a writ of habeas corpus, returnable in the county where the offence is committed.

Section 10. The privileges of the writ of habeas corpus shall not be suspended, except when, in case of rebellion or invasion, the public safety may require it.

Section 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open; and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law.

Section 12. No person for the same offence shall be twice put in jeopardy of life or limb, nor shall a person be again put upon trial for the same offence, after a verdict of not guilty; and the right of trial by jury shall remain inviolate.

Section 13. Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State.

Section 14. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made, and no person's property shall be taken or applied to public use without adequate compensation being made, unless by the consent of such person.

Section 15. No person shall ever be imprisoned for debt.

Section 16. No citizen of this State shall be deprived of life, liberty, property, or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

Section 17. The military shall at all times be subordinate to the civil authority.

Section 18. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailment ever be in force in this State.

Section 19. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, redress, or remonstrance.

Section 20. No power of suspending laws in this State shall be exercised, except by the legislature or its authority.

Section 21. To guard against transgressions of the high powers herein delegated, we declare that every thing in this "Bill of Rights" is excepted out of the general powers of the government, and shall forever remain inviolate; and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE 2.

Division of the powe s of Government.

Section 1. The powers of the government of the State of Texas shall be divided into three distinct departments, and each of them to be confined to a separate body of magistracy, to wit, those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE 3.

Legislative Department.

Section 1. Every free male person, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is at the time of the adoption of this constitution by the Congress of the United States a citizen of the Republic of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the district, county, city, or town in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified elector; and should such qualified elector happen to be in any other county situated in the district in which he resides at the time of an election, he shall be permitted to vote for any district officer, provided that the qualified electors shall be permitted to vote any where in the State for State officers; and provided further, that no soldier, seaman, or marine in the army or navy of the United States shall be entitled to vote at any election created by this constitution.

Section 2. All free male persons over the age of twenty-one years, (Indians not taxed, Africans and descendants of Africans excepted,) who shall have resided six months in Texas immediately preceding the acceptance of this constitution by the Congress of the United States, shall be deemed qualified electors.

Section 3. Electors in all cases shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, except in cases of treason, felony, or breach of the peace.

Section 4. The legislative powers of this State shall be vested in two distinct branches, the one to be styled the Senate, and the other the House of Representatives, and both together the "Legislature of the State of Texas;" the style of all laws shall be, "Be it enacted by the legislature of the State of Texas."

Section 5. The members of the house of representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of the general election. And the sessions of the legislature shall be biennial, at such times as shall be prescribed by law.

Section 6. No person shall be a representative unless he be a citizen of the United States at the time of the adoption of this constitution, a citizen of the Republic of Texas, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a citizen of the county, city, or town for which he shall be

chosen, and shall have attained the age of twenty-one years at the time of his election.

Section 7. All elections by the people shall be held at such time and places in the several counties, cities, or towns as are now or may hereafter be designated by law.

Section 8. The senators shall be chosen by the qualified electors for the term of four years, and shall be divided by lot into two classes, as nearly equal as can be. The seats of the senators for the first class shall be vacated at the expiration of the first two years, and of the second class at the expiration of four years; so that one half thereof shall be chosen biennially thereafter.

Section 9. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of number in each class.

Section 10. When a senatorial district shall be composed of two or more counties, it shall not be separated by any county belonging to another district.

Section 11. No person shall be a senator unless he be a citizen of the United States, or at the time of the acceptance of this constitution by the Congress of the United States a citizen of the Republic of Texas, and shall have been an inhabitant of this State three years next preceding the election, and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years.

Section 12. The house of representatives, when assembled, shall elect a speaker and its other officers, and the senate shall choose a president for the time being and its other officers. Each house shall judge of the qualifications and elections of its own members; but contested elections shall be determined in such manner as shall be directed by law. Two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Section 13. Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and with the consent of two-thirds expel a member, but not a second time for the same offence.

Section 14. Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journals.

Section 15. When vacancies happen in either house, the governor, or the person exercising the power of the governor, shall issue writs of election to fill such vacancies.

Section 16. Senators and representatives shall in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

Section 17. Each house may punish, by imprisonment, during the

session, any person not *not* a member, for disrespectful or disorderly conduct in its *present*, or for obstructing any of its proceedings: Provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

Section 18. The doors of each house shall be kept open.

Section 19. Neither house shall, without [the consent] of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting, without the concurrence of both houses.

Section 20. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law until, on three several days, it be read in each house, and free discussion be allowed thereon; unless, in case of great emergency, four-fifths of the house in which the bill shall be pending may deem it expedient to dispense with this rule; and every bill having passed both houses shall be signed by the speaker and president of their respective houses.

Section 21. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Section 22. After a bill or resolution has been rejected by either branch of the legislature, no bill or resolution containing the same substance shall be passed into a law during the same session.

Section 23. Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall be made.

Section 24. No senator or representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased during such term, and no member of either house of the legislature shall, during the term for which he is elected, be eligible to any office or place, the appointment of which may be made, in whole or in part, by either branch of the legislature; nor shall the members thereof be capable of voting for a member of their own body for any office whatever, except it be in such cases as are herein provided. The president for the time being of the senate, and speaker of the house of representatives, shall be elected from their respective bodies.

Section 25. No judge of any court of law or equity, secretary of state, attorney general, clerk of any court of record, sheriff, or collector, or any person holding a lucrative office under the United States, or this State, or any foreign government, shall be eligible to the legislature; nor shall, at the same time, hold or exercise any two offices, agencies, or appointments of trust or profit under this State: Provided, that officers of the militia, to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

Section 26. No person, who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the legislature, or to any office of profit or trust under

the State government, until he shall have obtained a discharge from the amount of such collections, and for all public moneys with which he may have been entrusted.

Section 27. Ministers of the gospel, being by their profession dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel or priest, of any denomination whatever, shall be eligible to the legislature.

Section 28. Elections for senators and representatives shall be general throughout the State, and shall be regulated by law.

Section 29. The legislature shall, at their first meeting, and in the year one thousand eight hundred and forty-eight, and fifty, and every eight years thereafter, cause an enumeration to be made of all the free inhabitants (Indians not taxed, Africans, and descendants of Africans excepted) of the State, designating particularly the number of qualified electors; and the whole number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the several counties, cities, or towns, according to the number of free population in each, and shall not be less than forty-five nor more than ninety.

Section 30. Until the first enumeration and apportionment under this constitution, the following shall be the apportionment of representatives amongst the several counties, viz:

The county of Montgomery shall elect four representatives; the counties of Red river, Harrison, Nacogdoches, Harris, and Washington, shall elect three representatives each; the counties of Fannin, Lamar, Bowie, Shelby, San Augustine, Rusk, Houston, Sabine, Liberty, Robertson, Galveston, Brazoria, Fayette, Colorado, Austin, Gonzales, and Bexar, two representatives each; the counties of Jefferson, Jasper, Brazos, Milam, Bastrop, Travis, Matagorda, Jackson, Fort Bend, Victoria, Refugio, Goliad, and San Patricio, one representative each.

Section 31. The whole number of senators shall, at the next session after the several periods of making the enumeration, be fixed by the legislature, and apportioned among the several districts to be established by law, according to the number of qualified electors, and shall never be less than nineteen nor more than thirty-three.

Section 32. Until the first enumeration, as provided for by this constitution, the senatorial districts shall be as follows, to wit: the counties of Fannin and Lamar shall constitute the first district, and shall elect one senator; the counties of Red river and Bowie the second district, and elect one senator; the counties of Fannin, Lamar, Red river, and Bowie, conjointly shall elect one senator; the county of Harrison, the third district, shall elect one senator; the counties of Nacogdoches, Rusk, and Houston, the fourth district, shall elect two senators; the counties of San Augustine and Shelby, the fifth district, shall elect one senator; the counties of Sabine and Jasper, the sixth district, shall elect one senator; the counties of Liberty and Jefferson, the seventh district, shall elect one senator; the counties of Robertson and Brazos, the eighth district, shall elect one senator; the county of Montgomery, the ninth district, shall elect one senator; the county of Harris, the tenth district,

shall elect one senator; the county of Galveston, the eleventh district, shall elect one senator; the counties of Brazoria and Matagorda, the twelfth district, shall elect one senator; the counties of Austin and Fort Bend, the thirteenth district, shall elect one senator; the counties of Colorado and Fayette, the fourteenth district, shall elect one senator; the counties of Bastrop and Travis, the fifteenth district, shall elect one senator; the counties of Washington and Milam, the sixteenth district, shall elect one senator; the counties of Victoria, Gonzales, and Jackson, the seventeenth district, shall elect one senator; the county of Bexar, the eighteenth district, shall elect one senator; the counties of Goliad, Refugio, and San Patricio, the nineteenth district, shall elect one senator.

Section 33. The first session of the legislature, after the adoption of this constitution by the Congress of the United States, shall be held at the city of Austin, the present seat of government, and thereafter until the year one thousand eight hundred and fifty, after which period the seat of government shall be permanently located by the people.

Section 34. The members of the legislature shall, at their first session, receive from the treasury of the State, as their compensation, three dollars for each day they shall be in attendance on, and three dollars for every twenty-five miles, travelling to and from the place of convening the legislature.

Section 35. In order to settle permanently the seat of government, an election shall be holden throughout the State, at the usual places of holding elections, on the first Monday in March, one thousand eight hundred and fifty, which shall be conducted according to law, at which time the people shall vote for such place as they may see proper for the seat of government. The returns of said election to be transmitted to the governor by the first Monday in June; if either place voted for shall have a majority of the whole number of votes cast, then the same shall be the permanent seat of government until the year one thousand eight hundred and seventy, unless the State shall sooner be divided. But in case neither place voted for shall have a majority of the whole number of votes given in, then the governor shall issue his proclamation for an election to be holden in the same manner on the first Monday in October, one thousand eight hundred and fifty, between the two places having the highest number of votes at the first election. The election shall be conducted in the same manner as at the first, and the returns made to the governor, and the place having the highest number of votes shall be the seat of government for the time herein before provided.

Article 4.

Judicial department.

Section 1. The judicial power of this State shall be vested in one supreme court, in district courts, and in such inferior courts as the legislature may, from time to time, ordain and establish; and such jurisdiction may be vested in corporation courts as may be deemed necessary, and be directed by law.

Section 2. The supreme court shall consist of a chief justice and two associates, any two of whom shall form a quorum.

Section 3. The supreme court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State; but in criminal cases, and in appeals from interlocutory judgments, with such exceptions and under such regulations as the legislature shall make. And the supreme court and judges thereof shall have power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, may issue writs of mandamus, and such other writs as shall be necessary to enforce its own jurisdiction, and also compel a judge of the district court to proceed to trial and judgment in a cause. And the supreme court shall hold its sessions once every year, between the months of October and June inclusive, at not more than three places in the State.

Section 4. The supreme court shall appoint its own clerks, who shall hold their offices for four years, and be subject to removal by the said court for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

Section 5. The governor shall nominate, and by and with the advice and consent of two-thirds of the senate shall appoint the judges of the supreme and district courts, and they shall hold their offices for six years.

Section 6. The State shall be divided into convenient judicial districts. For each district there shall be elected [appointed] a judge, who shall reside in the same, and hold the courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law.

Section 7. The judges of the supreme court shall receive a salary of not less than two thousand dollars annually, and the judges of the district court a salary of not less than seventeen hundred and fifty dollars annually; and the salaries of the judges shall not be increased or diminished during their continuance in office.

Section 8. The judges of the supreme and district courts shall be removed by the governor on the address of two-thirds of each house of the legislature, for wilful neglect of duty or other reasonable cause, which shall not be sufficient ground for impeachment; provided, however, that the cause or causes for which such removal shall be required shall be stated at length in such address, and entered on the journals of each house; and provided further, that the cause or causes shall be notified to the judge so intended to be removed; and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively.

Section 9. All judges of the supreme and district courts shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be the "State of Texas." All prosecutions shall be carried on in the name and by the authority of the "State of Texas," and conclude "against the peace and dignity of the State."

Section 10. The district court shall have original jurisdiction of all

criminal cases; of all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce, and of all suits, complaints, and pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to one hundred dollars, exclusive of interest; and the said courts, or the judges thereof, shall have power to issue all writs necessary to enforce their own jurisdiction, and to give them a general superintendence and control over inferior jurisdictions.

And in the trial of all criminal cases, the jury trying the same shall find and assess the amount of punishment to be inflicted, or fine imposed; except in capital cases, and where the punishment or fine imposed shall be specially imposed by law.

Section 11. There shall be a clerk of the district court for each county, who shall be elected by the qualified voters for members of the legislature, and who shall hold his office for four years, subject to removal by information, or by presentment of a grand jury, and conviction by a petit jury. In case of vacancy, the judge of the district court *have* the power to appoint a clerk until a regular election can be held.

Section 12. The governor shall nominate, and by and with the advice and consent of two-thirds of the senate, appoint an attorney general, who shall hold his office for two years; and there shall be elected by joint vote of both houses of the legislature, a district attorney for each district, who shall hold his office for two years; and the duties, salaries, and perquisites of the attorney general and district attorneys, shall be prescribed by law.

Section 13. There shall be appointed for each county a convenient number of justices of the peace, one sheriff, one coroner, and a sufficient number of constables, who shall hold their offices for two years, to be elected by the qualified voters of the district or county, as the legislature may direct. Justices of the peace, sheriffs, and coroners, shall be commissioned by the governor. The sheriff shall not be eligible more than four years in every six.

Section 14. No judge shall sit in any case where he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law; or where he shall have been of counsel in the cause. When the supreme court or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, or when no judgment can be rendered in any case or cases in said court, by reason of the equal division of opinion of said judges, the same shall be certified to the governor of the State, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of said case or cases. When the judges of the district court are thus disqualified, the parties may, by consent, appoint a proper person to try the said case, and the judges of the said courts may exchange districts, or hold courts for each other, when they may deem it expedient, and shall do so, when directed by law. The disqualifications of judges of inferior tribunals shall be remedied, as may hereafter be by law prescribed.

Section 15. Inferior tribunals shall be established in each county, for appointing guardians, granting letters testamentary and of administration; for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and the district courts shall have original and appellate jurisdiction, and general control over the said inferior tribunals, and original jurisdiction and control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law.

Section 16. In the trial of all causes in equity in the district court, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury, to be governed by the rules and regulations prescribed in trials at law.

Section 17. Justices of the peace shall have such civil and criminal jurisdiction, as shall be provided for by law.

Section 18. In all causes arising out of a contract, before any inferior judicial tribunal, when the amount in controversy shall exceed ten dollars, the plaintiff or defendant shall, upon application to the presiding officer, have the right of trial by jury.

Section 19. In all cases where justices of the peace or other judicial officers of inferior tribunals shall have jurisdiction, in the trial of causes, where the penalty for the violation of a law is fine or imprisonment, (except in cases of contempt,) the accused shall have the right of trial by jury.

Article 5.

Executive Department.

Section 1. The supreme executive power of this State shall be vested in the chief magistrate, who shall be styled the Governor of the State of Texas.

Section. 2. The governor shall be elected by the qualified electors of the State, at the time and places of elections for members of the legislature.

Section. 3. The returns of every election for governor shall, until otherwise provided by law, be made out, sealed up, and transmitted to the seat of government, and directed to the speaker of the house of representatives, who shall, during the first week of the session of the legislature thereafter, open and publish them, in the presence of both houses of the legislature; the person having the highest number of votes, and being constitutionally eligible, shall be declared by the speaker, under the direction of the legislature, to be governor; but if two or more persons shall have the highest, and an equal number of votes, one of them shall be immediately chosen governor by joint vote of both houses of the legislature. Contested elections for governor shall be determined by both houses of the legislature.

Section 4. The governor shall hold his office for the term of two years from the regular time of installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a citizen of the United States, or a citizen of the State of Texas, at

the time of the adoption of this constitution, and shall have resided in the same three years immediately preceding his election.

Section 5. He shall at stated times receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected. The first governor shall receive an annual salary of two thousand dollars, and no more.

Section 6. The governor shall be commander-in-chief of the army and navy of this State, and of the militia, except when they are to be called into the service of the United States.

Section 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

Section 8. He may, by proclamation, on extraordinary occasions convene the legislature at the seat of Government, or at a different place if that should be in the actual possession of a common enemy. In case of disagreement between the two houses with respect to an adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next regular meeting of the legislature.

Section 9. He shall from time to time give to the legislature information in writing of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

Section 10. He shall take care that the laws be faithfully executed.

Section 11. In all criminal cases, except in those of treason and impeachment, he shall have power after conviction to grant reprieves and pardons, and under such rules as the legislature may prescribe, he shall have power to remit fines and forfeitures. In cases of treason he shall, by and with the advice and consent of the senate, grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the legislature.

Section 12. There shall also be a lieutenant governor, who shall be chosen at every election for governor, by the same persons, and in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish for whom they vote as governor and for whom as lieutenant governor. The lieutenant governor shall by virtue of his office be president of the senate, and have, when in committee of the whole, a right to debate and vote on all questions, and when the senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the governor to serve, or of his impeachment, or absence from the State, the lieutenant governor shall exercise the powers and authority appertaining to the office of governor, until another be chosen at the periodical election and be duly qualified, or until the governor impeached, absent, or disabled, shall be acquitted, return, or his disability be removed.

Section 13. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for

the time being; and if, during the vacancy of the office of governor, the lieutenant governor shall die, resign, refuse to serve, or be removed from office, or be unable to serve, or if he shall be impeached, or absent from the State, the president of the senate for the time being shall in like manner administer the government until he shall be superceded by a governor or lieutenant governor. The lieutenant governor shall, whilst he acts as president of the senate, receive for his services the same compensation which shall be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor, shall receive the same compensation which the governor would have received had he been employed in the duties of his office, and no more. The president, for the time being, of the senate, shall, during the time he administers the government, receive in like manner the same compensation which the governor would have received had he been employed in the duties of his office. If the lieutenant governor shall be required to administer the government, and shall, whilst in such administration, die, resign, or be absent from the State, during the recess of the legislature, it shall be the duty of the secretary of State to convene the senate for the purpose of choosing a president for the time being.

Section 14. There shall be a seal of the State, which shall be kept by the governor, and used by him officially. The said seal shall be a star of five points, encircled by an olive and live oak branches, and the words "the State of Texas."

Section 15. All commissions shall be in the name and by the authority of the State of Texas, and sealed with the State's seal, signed by the governor and attested by the secretary of State.

Section 16. There shall be a secretary of State, who shall be appointed by the governor, by and with the advice and consent of the senate, and shall continue in office during the term of service of the governor elect. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the legislature, or either house thereof, and shall perform such other duties as may be required of him by law.

Section 17. Every bill which shall have passed both houses of the legislature shall be presented to the governor; if he approve he shall sign it, but if not he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon the journals and proceed to reconsider it; if after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journals of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he

had signed it. Every bill presented to the governor one day previous to the adjournment of the legislature, and not returned to the house in which it originated before its adjournment, shall become a law, and have the same force and effect as if signed by the governor.

Section 18. Every order, resolution, or vote, to which the concurrence of both houses of the legislature may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill.

Section 19. The governor, by and with the advice and consent of two-thirds of the senate, shall appoint a convenient number of notaries public, not exceeding six for each county, who, in addition to such duties as are prescribed by law, shall discharge such other duties as the legislature may from time to time prescribe.

Section 20. Nominations to fill all vacancies that may have occurred during the recess shall be made to the senate during the first ten days of its session. And, should any nomination so made be rejected, the same individual shall not again be nominated during the session to fill the same office. And should the governor fail to make nominations to fill any vacancy during the session of the senate, such vacancy shall not be filled by the governor until the next meeting of the senate.

Section 21. The governor shall reside, during the session of the legislature, at the place where the sessions may be held, and at all other times whenever, in their opinion, the public good may require.

Section 22. No person holding the office of governor shall hold any other office or commission, civil or military.

Section 23. A State treasurer and comptroller of public accounts shall be biennially elected, by the joint ballot of both houses of the legislature; and, in case of vacancy in either of said offices during the recess of the legislature, such vacancy shall be filled by the governor; which appointment shall continue until the close of the next session of the legislature thereafter.

Article 6.

Militia.

Section 1. The legislature shall provide by law for organizing and disciplining the militia of this State in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States in relation thereto.

Section 2. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Section 3. No licensed minister of the gospel shall be required to perform military duty, work on roads, or serve on juries in this State.

Section 4. The governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

ARTICLE 7.

General provisions.

Section 1. Members of the legislature and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation: "I, (A B,) do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State; and I do further solemnly swear (or affirm) that, since the adoption of this Constitution by the Congress of the United States, I, being a citizen of this State, have not fought a duel with deadly weapons within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person thus offending, so help me God."

Section 2. Treason against this State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Section 3. Every person shall be disqualified from holding any office of trust or profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Section 4. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practice.

Section 5. Any citizen of this State who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it, or who shall act as second, or knowingly aid and assist in any manner those thus offending, shall be deprived of holding any office of trust or profit under this State.

Section 6. In all elections by the people the vote shall be by ballot, until the legislature shall otherwise direct; and, in all elections by the senate and house of representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

Section 7. The legislature shall provide by law for the compensation of all officers, servants, agents, and public contractors, not provided for by this constitution, and shall not grant extra compensation to any officer, agent, servant, or public contractor after such public service shall have been performed or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the treasury of the State to any individual, on a claim real or pretended, where the same shall not have been provided for by pre-existing law: Provided, That nothing in this section shall be so

construed as to affect the claims of persons against the Republic of Texas heretofore existing.

Section 8. No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except for purposes of education; and no appropriation for private or individual purposes, or for purposes of internal improvement, shall be made without the concurrence of two thirds of both houses of the legislature. A regular statement and account of the receipts and expenditures of all public money shall be published, annually, in such manner as shall be prescribed by law. And in no case shall the legislature have power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money.

Section 9. All civil officers shall reside within the State, and all district or county officers within their districts or counties; and shall keep their offices at such places therein as may be required by law.

Section 10. The duration of all offices, not fixed by this constitution, shall never exceed four years.

Section 11. Absence on the business of this State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this constitution.

Section 12. The legislature shall have power to provide for deductions from the salaries of public officers, who may neglect the performance of any duty that may be assigned them by law.

Section 13. No member of Congress, nor person holding or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of profit or trust under this State.

Section 14. The legislature shall provide for a change of venue in civil and criminal cases; and for the erection of a penitentiary at as early a day as practicable.

Section 15. It shall be the duty of the legislature to pass such laws as may be necessary and proper, to decide differences by arbitration, when the parties shall elect that method of trial.

Section 16. Within five years after the adoption of this constitution, the laws, civil and criminal, shall be revised, digested, arranged, and published in such manner as the legislature shall direct, and a like revision, digest, and publication shall be made every ten years thereafter.

Section 17. No lottery shall be authorized by this State; and the buying or selling of lottery tickets within this State, is prohibited.

Section 18. No divorce shall be granted by the legislature.

Section 19. All property, both real and personal of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Section 20. The rights of property and of action which have been acquired under the constitution and laws of the Republic of Texas shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void by the constitution and laws of the Republic of Texas, be re-invested, revived, or reinstated by this constitution; but the same shall remain precisely in the situation which they were before the adoption of this constitution.

Section 21. All claims, locations, surveys, grants, and titles to land, which are declared null and void by the Republic of Texas, are, and the same shall, remain forever null and void.

Section 22. The legislature shall have power to protect by law from forced sale a certain portion of the property of all heads of families. The homestead of a family not to exceed two hundred acres of land, not included in a town or city, or any town or city lot or lots, in value not to exceed two thousand dollars, shall not be subject to forced sale for any debts hereafter contracted; nor shall the owner, if a married man, be at liberty to alienate the same, unless by the consent of the wife, in such manner as the legislature may hereafter point out.

Section 23. The legislature shall provide in what cases officers shall continue to perform the duties of their offices, until their successors shall be duly qualified.

Section 24. Every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title.

Section 25. No law shall be revised or amended by reference to its title; but in such case the act revised, or section amended, shall be re-enacted and published at length.

Section 26. No person shall hold or exercise at the same time more than one civil office of emolument, except that of justice of the peace.

Section 27. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two-thirds of both houses of the legislature may think proper to exempt from taxation. The legislature shall have power to lay an income tax, and to tax all persons pursuing any occupation, trade, or profession; provided, that the term occupation shall not be construed to apply to pursuits, either agricultural or mechanical.

Section 28. The legislature shall have power to provide by law for exempting from taxation two hundred and fifty dollars worth of household furniture or other property belonging to each family in this State.

Section 29. The assessor and collector of taxes shall be appointed in such manner and under such regulations as the legislature may direct.

Section 30. No corporate body shall hereafter be created, renewed, or extended, with banking or discounting privileges.

Section 31. No private corporation shall be created, unless the bill creating it shall pass by two-thirds of both houses of the legislature; and two-thirds of the legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise. And the State shall not be part owner of the stock or property belonging to any corporation.

Section 32. The legislature shall prohibit by law individuals from issuing bills, checks, promissory notes, or other paper to circulate as money.

Section 33. The aggregate amount of debts hereafter contracted by the legislature shall never exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion or suppress insurrections. And in no case shall any amount be borrowed, except by a vote of two-thirds of both houses of the legislature.

Section 34. The legislature shall, at the first session thereof, and may at any subsequent session, establish new counties for the convenience of the inhabitants of such new county or counties. Provided, that no new county shall be established, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles (except the county of Bowie) unless by consent of two-thirds of the legislature, nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as part of the county or counties from which it was taken until entitled by numbers to the right of separate representation.

Section 35. No soldier shall, in time of peace, be quartered in the house or within the enclosure of any individual without the consent of the owner; nor in time of war but in a manner prescribed by law.

Section 36. The salaries of the governor, and judges of the supreme court and district courts, are hereby fixed at the minimum established in the constitution, and shall not be increased for ten years.

Mode of amending the constitution.

Section 37. The legislature, whenever two-thirds of each house shall deem it necessary, may propose amendments to this constitution; which proposed amendments shall be duly published in the public prints of the State at least three months before the next general election of representatives for the consideration of the people; and it shall be the duty of the several returning officers at the next election, which shall be thus holden, to open a poll for, and make a return to the secretary of state of, the names of all those voting for representatives, who have voted on such proposed amendments; and if thereupon it shall appear that a majority of all the citizens of this State, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next legislature shall, after such election, and before another, ratify the same amendments by yeas and nays, they shall be valid to all intents and purposes as parts of this constitution; provided, that the said proposed amendments shall, at each of the said sessions, have been read on three several days in each house.

ARTICLE 8.

Slaves.

Section 1. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, nor without

paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State; provided, that such slave be the bona fide property of such emigrants; provided, also, that laws shall be passed to inhibit the introduction into this State of slaves who have committed high crimes in other States or territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity, to provide for their necessary food and clothing, to abstain from all injuries to them extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have the slave or slaves taken from such owner, and sold for the benefit of such owner or owners. They may pass laws to prevent slaves from being brought into this State as merchandise only.

Section 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

Section 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed upon a free white person, and on the like proof—except in case of insurrection of such slave.

Article 9.

Impeachment.

Section 1. The power of impeachment shall be vested in the house of representatives.

Section 2. Impeachment of the governor, lieutenant governor, attor-

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as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

Section 4. All fines, penalties, forfeitures, and escheats, which have accrued to the Republic of Texas under the constitution and laws, shall accrue to the State of Texas; and the legislature shall, by law, provide a method for determining what lands may have been forfeited or escheated.

Section 5. Immediately after the adjournment of this convention, the President of the Republic shall issue his proclamation, directing the chief justices of the several counties of this Republic, and the several chief justices and their associates are hereby required to cause polls to be opened in their respective counties, at the established precincts, on the second Monday of October next, for the purpose of taking the sense of the people of Texas in regard to the adoption or rejection of this constitution; and the votes of all persons entitled to vote under the existing laws, or this constitution, shall be received. Each voter shall expre-

Section 6. The legislature shall provide for the trial, punishment, and removal from office of all other officers of the State by indictment or otherwise.

Article 10.

Education.

Section 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the legislature of this State to make suitable provisions for the support and maintenance of public schools.

Section 2. The legislature shall, as early as practicable, establish free schools throughout the State, and shall furnish means for their support by taxation on property. And it shall be the duty of the legislature to set apart not less than one-tenth of the annual revenue of the State derivable from taxation as a perpetual fund, which fund shall be appropriated to the support of free public schools, and no law shall ever be made diverting said fund to any other use; and until such time as the legislature shall provide for the establishment of such schools in the several districts of the State, the fund thus created shall remain as a charge against the State, passed to the credit of the free common school fund.

Section 3. All public lands which have been heretofore, or which may hereafter be, granted for public schools to the various counties, or political divisions of the State, shall not be alienated in fee, nor disposed of otherwise than by lease for a term not exceeding twenty years in such manner as the legislature may direct.

Section 4. The several counties in this State, which have not received their quantum of lands for the purposes of education, shall be entitled to the same quantity heretofore appropriated by the Congress of the Republic of Texas to other counties.

[redacted] several returning officers at the next election, which shall be thus holden, to open a poll for, and make a return to the secretary of state of, the names of all those voting for representatives, who have voted on such proposed amendments; and if thereupon it shall appear that a majority of all the citizens of this State, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next legislature shall, after such election, and before another, ratify the same amendments by yeas and nays, they shall be valid to all intents and purposes as parts of this constitution; provided, that the said proposed amendments shall, at each of the said sessions, have been read on three several days in each house.

Article 8.

Slaves.

Section 1. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, nor without

Article 12.

Land Office.

Section 1. There shall be one general land office in the State, which shall be at the seat of government, where all titles which have heretofore emanated, or may hereafter emanate, from the government shall be registered, and the legislature may establish, from time to time, such subordinate offices as they may deem requisite.

Article 13.

Schedule.

Section 1. That no inconvenience may arise from a change of separate national government to a State government, it is declared, that all process which shall be issued in the name of the Republic of Texas, prior to the organization of the State government under this constitution, shall be as valid as if issued in the name of the State of Texas.

Section 2. The validity of all bonds and recognizances, executed in conformity with the constitution and laws of the Republic of Texas, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the State of Texas; and all criminal prosecutions, or penal actions, which shall have arisen prior to the organization of the State government under this constitution, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution in the name of said State. All suits at law and equity, which may be depending in any of the courts of the Republic of Texas, prior to the organization of the State government under this constitution, shall be transferred to the proper court of the State which shall have jurisdiction of the subject matter thereof.

Section 3. All laws, and parts of laws, now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States, the joint resolutions for annexing Texas to the United States, or to the provisions of this constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

Section 4. All fines, penalties, forfeitures, and escheats, which have accrued to the Republic of Texas under the constitution and laws, shall accrue to the State of Texas; and the legislature shall, by law, provide a method for determining what lands may have been forfeited or escheated.

Section 5. Immediately after the adjournment of this convention, the President of the Republic shall issue his proclamation, directing the chief justices of the several counties of this Republic, and the several chief justices and their associates are hereby required to cause polls to be opened in their respective counties, at the established precincts, on the second Monday of October next, for the purpose of taking the sense of the people of Texas in regard to the adoption or rejection of this constitution; and the votes of all persons entitled to vote under the existing laws, or this constitution, shall be received. Each voter shall expre

his opinion by declaring a "viva voce" for the "constitution accepted" or "the constitution rejected," or some words clearly expressing the intention of the voter; and at the same time the vote shall be taken, in like manner, for and against annexation. The election shall be conducted in conformity with the existing laws regulating elections; and the chief justices of the several counties shall carefully and promptly make duplicate returns of said polls, one of which shall be transmitted to the secretary of state of the Republic of Texas, and the other deposited in the clerk's office of the county court.

Section 6. Upon the receipt of said returns, or on the second Monday of November next, if the returns be not sooner made, it shall be the duty of the President, in presence of such officers of his cabinet as may be present, and of all persons who may choose to attend, to compare the votes given for the ratification or rejection of this constitution; and if it should appear, from the returns, that a majority of all the votes given is for the adoption of the constitution, then it shall be the duty of the President to make proclamation of that fact, and thenceforth this constitution shall be ordained and established as the constitution of the State, to go into operation, and be of force and effect, from and after the organization of the State government under this constitution. And the President of this Republic is authorized and required to transmit to the President of the United States duplicate copies of this constitution, properly authenticated, together with certified statements of the number of votes given for the ratification thereof, and the number for rejection; one of which copies shall be transmitted by mail, and one copy by a special messenger, in sufficient time to reach the seat of government of the United States early in December next.

Section 7. Should this constitution be accepted by the people of Texas, it shall be the duty of the President, on or before the second Monday in November next, to issue his proclamation, directing and requiring elections to be holden in all the counties of this Republic, on the third Monday in December next, for the office of governor, lieutenant-governor, members of the senate and house of representatives of the State legislature, in accordance with the apportionment of representation directed by this constitution. The returns for members of the legislature of this State shall be made to the department of state of this Republic, and those for governor and lieutenant-governor shall be addressed to the speaker of the house of Representatives, endorsed "election returns of county for governor," and directed to the department of state; and should, from any cause, the chief justices fail to cause to be holden any of the polls, or elections provided for by this constitution, at the times and places herein directed, the people of the precincts where such failure exists are hereby authorized to choose managers, judges, and other officers to conduct said elections.

Section 8. Immediately on the President of this Republic receiving official information of the acceptance of this constitution by the Congress of the United States, he shall issue his proclamation, convening, at an early day, the legislature of the State of Texas, at the seat of government established under this constitution; and, after the said legis-

lature shall have organized, the speaker of the house of representatives shall, in presence of both branches of the legislature, open the returns of the elections for governor and lieutenant-governor, count and compare the votes, and declare the names of the persons who shall be elected to the offices of governor and lieutenant-governor, who shall forthwith be installed in their respective offices; and the legislature shall proceed, as early as practicable, to elect senators to represent this State in the Senate of the United States, and also provide for the election of representatives to the Congress of the United States. The legislature shall also adopt such measures as may be required to cede to the United States, at the proper time, all public edifices, fortifications, barracks, ports, harbors, navy and navy-yards, docks, magazines, arms, and armaments, and all other property and means pertaining to the public defence now belonging to the Republic of Texas; and to make the necessary preparations for transferring to the said United States all custom-houses, and other places for the collection of impost duties, and other foreign revenues.

Section 9. It shall be the duty of the President of Texas, immediately after the inauguration of the governor, to deliver to him all records, public money, documents, archives, and public property of every description whatsoever, under the control of the executive branch of the government; and the governor shall dispose of the same in such manner as the legislature may direct.

Section 10. That no inconvenience may result from the change of government, it is declared, that the laws of this Republic relative to the duties of officers, both civil and military of the same, shall remain in full force; and the duties of their several offices shall be performed in conformity with the existing laws, until the organization of the government of the State under this constitution, or until the first day of the meeting of the legislature. That then the offices of President, vice-president, of the President's cabinet, foreign ministers, charges, and agents, and others repugnant to this constitution, shall be superceded by the same; and that all others shall be holden and exercised until they expire by their own limitation, or be superceded by the authority of this constitution, or laws made in pursuance thereof.

Section 11. In case of any disability on the part of the President of the Republic of Texas to act as herein required, it shall be the duty of the secretary of state of the Republic of Texas, and in case of disability on the part of the secretary of state, then it shall be the duty of the attorney general of the Republic of Texas, to perform the duties assigned to the President.

Section 12. The first general election for governor, lieutenant-governor, and members of the legislature, after the organization of the government, shall take place on the first Monday in November, one thousand eight hundred and forty-seven, and shall be held biennially thereafter, on the first Monday in November, until otherwise provided by the legislature. And the governor and lieutenant-governor elected in December next, shall hold their offices until the installation in office of

the governor and lieutenant-governor to be elected in the year one thousand eight hundred and forty-seven.

Section 13. The ordinance passed by the convention on the fourth day of July, assenting to the overtures for the annexation of Texas to the United States, shall be attached to this constitution and form a part of the same.

Done in convention by the deputies of the people of Texas, at the city of Austin, in the year of our Lord one thousand eight hundred and forty-five.

In testimony whereof we have hereunto subscribed our names.

THOMAS J. RUSK, *President*.

John D. Anderson,
James Armstrong,
Cavitt Armstrong,
B. C. Bagby,
R. E. B. Baylor,
R. Bache,
J. W. Brashear,
Geo. Wm. Brown,
James M. Burroughs,
Jno Caldwell,
William L. Cazneau,
Edward Clark,
A. S. Cunningham,
Phil. M. Cuny,
Nicholas H. Darnell,
James Davis,
Lemuel Dale Evans,
Gustavus A. Everts,
Robert M. Forbes,
David Gage,
John Hemphill,
J. Pinckney Henderson,
A. W. O. Hicks,
Jos. L. Hogg,
A. C. Horton,
Volney E. Howard,
Spearman Holland,
Wm. L. Hunter,
Van R. Irion,
Henry J. Jewett,
Oliver Jones,
H. L. Kinney,
Albert H. Latimer,
Henry R. Latimer,
John M. Lewis,
James Love,
P. O. Lumpkin,
Sam. Lusk,
Abner S. Lipscomb,
James S. Mayfield,
A. McGowan,
Archibald McNeill,
J. B. Miller,
Francis Moore, jr.,
J. Antonio Navarro,
W. B. Ochiltree,
Isaac Parker,
James Power,
Emory Rains,
H. G. Runnels,
James Scott,
George W. Smyth,
Israel Standefer,
Chas. Bellinger Stewart,
E. H. Tarrant,
Isaac Vanzandt,
Francis M. White,
George T. Wood,
G. W. Wright,
Wm. Cock Young.

Attest:

JAMES H. RAYMOND,
Secretary of the Convention.

An ordinance.

Whereas the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the

first day of March, one thousand eight hundred and forty-five; and whereas the President of the United States has submitted to Texas the first and second sections of the said resolution, as the basis upon which Texas may be admitted as one of the States of the said Union; and whereas the existing Government of the Republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows:

Joint resolution for the annexation of Texas to the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2d. And be it further resolved, that the foregoing consent of Congress is given upon the following conditions, and with the following guaranties, to wit: First, said State to be formed, subject to the adjustment by this Government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action on or before the first day of January, one thousand eight hundred and forty six. Second, said State, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means pertaining to the public defence belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to, or be due and owing to, the said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. Third, new States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory, north of said Missouri compromise line, slavery or involuntary servitude (except for crime) shall be prohibited.

Now, in order to manifest the assent of the people of this Republic, as required in the above recited portions of the said resolutions, we, the deputies of the people of Texas in convention assembled, in their name and by their authority, do ordain and declare that we assent to and accept the proposals, conditions, and guaranties, contained in the first and second sections of the resolution of the Congress of the United States aforesaid.

Done at the city of Austin, Republic of Texas, July 4, 1845.

THOMAS J. RUSK, *President*.

Attest:

JAMES H. RAYMOND,
Secretary of the Convention.

Exhibit Q.

An act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants.

29 Oct 1840

Section 1. Be it enacted by the senate and house of representatives of the Republic of Texas, in Congress assembled, That there shall be elected by joint vote of both houses of Congress, three commissioners, whose duty it shall be to visit each county in the Republic, the county seat of which is east of the Brazos river; and also three other commissioners, whose duty it shall be to visit each county, the county seat of which is west of the Brazos river; and in conjunction with three county commissioners, to be elected in like manner by Congress, from the respective counties for which they are to act, to inspect the boards of land commissioners, and ascertain by satisfactory testimony what certificates for land have been issued by the respective boards to legal claimants, and report as soon thereafter as practicable to the commissioner of the general land office, such certificates as they find to be genuine and legal, setting forth in their reports the manner and date of the certificates, the quantity of land, and the name of the person to whom issued; in which report at least two of the general commissioners and two of the county commissioners must concur.

Sec. 2. Be it further enacted, That each of the general commissioners before entering upon the duties of their appointment, shall be commissioned by the president, and shall take and subscribe before some district judge, or chief justice of a county, the following oath: "I do solemnly swear, that as a commissioner to investigate the transactions of the boards of land commissioners, I will honestly and faithfully discharge my duties, and will not report or recommend to the commissioner of the general land office any certificate that I do not believe to be a genuine and legal claim against the government, and issued in conformity with the provisions of the constitution, and of the laws granting donations of land to emigrants; and I do also swear, that I will neither directly nor indirectly purchase or trade, in any way, for lands, or certificates of lands, during the time I am acting as commissioner, to investigate the records of the boards of land commissioners for the several counties for which I am appointed, and that I will not

report or recommend to the commissioner of the general land office any certificate for land in which I am in any way interested." That each of the county commissioners, before entering upon the duties of his appointment, shall take and subscribe the same oath, before some chief justice of a county, or before one of the general commissioners, which oath the person so administering shall have recorded in the county court clerk's office of the county; and it shall be the duty of the district judge, or chief justice of a county, administering the oath to the general commissioners, to endorse the same on the back of their commissions.

Section 3. Be it further enacted, That the commissioners east of the Brazos river shall meet at the town of Milam, in the county of Sabine, on the first Monday in February next, or as soon thereafter as practicable, and continue their labors until they shall have visited every county east of the Brazos, and make report to the commissioner of the general land office as required by this act; and the commissioners west of the Brazos shall meet at the town of Nashville, in the county of Milam, on the first Monday in February next, or as soon thereafter as practicable, and continue their labors until they shall have visited every county west of the Brazos, and report as required above to the commissioner of the general land office.

Sec. 4. Be it further enacted, That it shall be the duty of the commissioner of the general land office, upon the return of a survey made in accordance with law, and by authority of any certificate that shall be returned as genuine and legal, by the commissioners appointed by this act, and as required by this act, to make out and deliver to the rightful owner a patent for the same, unless it shall appear from the records of his office, or from information on oath given him, that there is some illegality in the claim; in such case he shall refer the matter to the attorney general, whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

Section 5. Be it further enacted, That the commissioner of the general land office is hereby prohibited from issuing a patent upon any survey that shall not have been or may hereafter be made, by authority of a certificate returned as genuine and legal, by the commissioners appointed by this act, or by authority of a warrant issued by special act of Congress; and any patent issued contrary to the provisions of this act shall be null and void, and the commissioner of the general land office, issuing a patent contrary to the provisions of this act, shall be deemed guilty of a high misdemeanor, and on conviction thereof, before the district court, shall be fined in a sum of not less than five thousand dollars, unless the person claiming such patent shall produce to the commissioner of the general land office the judgment or decree of a district court of this Republic, from which no appeal was taken, within the time prescribed by law, that he is justly entitled to the amount of land under the constitution and laws of this Republic.

Sec. 6. Be it further enacted, That the commissioner of the general land office shall, in every instance of a head right claim, make out the patent in the name of the original claimant; and the patent made out in the name of any other person shall be null and void.

Sec. 7. Be it further enacted, That any person claiming land by virtue of an assignment made previous to the issuing of the patent by the government on the said claim, shall have six months from the issuing of the said patent to have the assignment proved up, and recorded in the county where the land is situated; and any assignment, proven up and recorded as required by law within the said six months, shall be as valid in law as if it had been proven up [and] recorded at the time the said transfer was made.

Sec. 8. Be it further enacted, That in all cases where appeals have been taken to the district court, from the boards of land commissioners, in accordance with section the 16th, of the land law passed December 14th, 1837, and where said appeals have been decided by the verdict of a jury in favor of appellants, it shall be the duty of the commissioner herein appointed to report such claims as have been passed by the judiciary, on which it shall be the duty of the commissioner of the general land office to issue patents as required above.

Sec. 9. Be it further enacted, That should a vacancy occur in the board of general commissioners, it shall be the duty of the president to fill the vacancy as early as practicable, and should a vacancy occur in any of the boards of county commissioners, the board of general commissioners shall fill the same.

Section 10. Be it further enacted, That the general commissioners appointed by this act shall receive as compensation for their services ten dollars per day, from the time they commence their labors until they shall have visited all the counties which by this act they are required to visit, and five dollars for every twenty-five miles they must necessarily travel in going to the place of their commencement, and for returning from the last county they visit to the seat of government, and from thence to their place of residence; and the county commissioners shall receive five dollars per day for the time they are actually employed.

Section 11. Be it further enacted, That there be, and is hereby, specially appropriated, for the purpose contemplated in this act, the sum of twenty thousand dollars of the promissory notes of the government, and the treasurer is hereby authorized and required to pay five hundred dollars in advance to each of the said general commissioners, and to pay to the county commissioners, upon the certificate of the general commissioners, or any two of them, the sum of five dollars per day for the time they were actually employed.

Section 12. Be it further enacted, That the clerks of the county courts shall act as clerks of the commissioners appointed under this act, whose duty it shall be to record, in a well bound book, a synopsis of the certificates approved and returned to the general land office as genuine and legal, stating the number, the date, the quantity of land, and the name of the claimant; which book of record, after being approved and signed by the commissioners, shall be attested by the clerk, and be filed in his office for public reference. It shall also be the duty of the clerk immediately to make out two copies of said synopsis, one of which shall be retained by the general commissioners, and the other

transmitted by them to the commissioner of the general land office; and in case of the absence of any of the clerks, it shall be the duty of the commissioners to appoint some suitable person to act as clerk, and the said clerks shall receive for their services five dollars per day for the time they are actually employed, to be paid upon the certificate of any two of the general commissioners.

Section 13. Be it further enacted, That no member of Congress shall be elected to the office of commissioner under the provisions of this act.

Section 14. Be it further enacted, That no individual who has heretofore been employed in any of the land offices in any of the counties of this Republic as land commissioners, shall be eligible to the office of either general or county commissioners.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Vetoed by the President, and passed by a constitutional majority of the house of representatives, this 28th January, 1840.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

Vetoed by the President, and passed by a constitutional majority of the senate, this 29th January, 1840.

DAVID G. BURNET,
President of the Senate.

Exhibit R. Rec'd 1840

An act prohibiting the location of fraudulent land claims.

Section 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That from and after the first day of May next, it shall not be lawful for any county or deputy surveyor, to locate any certificate for land, or to survey any lands for any person or persons holding a certificate, unless the same be certified under the hand and seal of the county court clerk of the county where the certificate was issued, or the county where it is proposed to be located, or be certified under the hand and seal of the commissioner of the general land office, that the same has been reported by the commissioners appointed under an act of Congress to detect fraudulent land certificates, &c., passed January, 1840, as a genuine and legal claim against the government of Texas; and any surveyor offending against the true intent and meaning of this act shall be deemed guilty of a high misdemeanor, and on conviction thereof before a district court, shall be removed from office, and fined in a sum not more than five thousand dollars, at the discretion of the court.

Section 2. Be it further enacted, That any survey made contrary to the meaning and intent of this act shall be null and void.

Section 3. Be it further enacted, That it is hereby made the duty of the commissioner of the general land office, so soon as returns are made to his office by the commissioners appointed under an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, passed January, 1840, and in accordance with said act, to make out and transmit as soon thereafter as practicable, to the county court clerk of each county of the Republic, a full and true copy of the return made from the several counties.

Section 4. Be it further enacted, That a sufficient amount of the promissory notes of the government be, and the same is hereby, appropriated for defraying the expenses of having printed a sufficient number of the returns as required above.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5, 1840.

MIRABEAU B. LAMAR.

July 4 - 1841

Exhibit S.

An act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants.

Section 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That any individual holding or owning any head right certificate, issued by any board of land commissioners of the Republic of Texas, which certificate may not have been recommended as genuine and legal by the general and local commissioners appointed under the act to which this is a supplement, may file his petition, under oath, in the district court of the county where such certificates were issued, setting forth the grounds on which he founds his claim, and also stating that he is entitled to the amount of land claimed by virtue of his emigration to this country, or by virtue of the assignment of the head-right claim of an actual emigrant and citizen of the county, of which petition there need not be any service, but the same shall be filed in the office of the clerk of the district court at least five days before the commencement of the term of the court at which it may be tried, to which the general issue shall be considered as pleaded by the Republic; whereupon a jury shall be empannelled as provided in other cases, and only by oral testimony heard, to try said cause; and should the jury find in favor of the claimant, it shall be the duty of the clerk to make out a certificate to that effect under the seal of the court, and approved by the presiding judge, which certificate shall be handed over to the successful claimant.

Section 2. Be it further enacted, That it shall be the duty of the clerks of the several district courts within twenty days after the adjournment of each and every term of said court, to transmit to the Commissioner of the General Land Office a list of all the individuals who may have been successful in the suits instituted under this act in

his said county, specifying the amount of land to which they were declared by the court and jury to be entitled, which certificate shall be under the seal of said court, to which shall be appended the affidavit of the said district court clerk of the correctness of said list; and it shall further be the duty of the chief justice of the county in the district court of which said suit was decided in favor of the claimant to examine the records of said district court of his county; and if the list is found to be correct, it shall be his duty to certify the same, under the seal of the county court.

Sec. 3. Be it further enacted, That upon the receipt of said list from the district clerks by the commissioner of the general land office, and upon the claimant presenting his certificate as before provided for to said commissioner, it shall be the duty of said commissioner forthwith to issue a patent on said claim, in the same manner as if said claim had been recommended as genuine and legal by the board of commissioners appointed under the act to which this is a supplement.

Sec. 4. Be it further enacted, That it shall be the duty of the district judge, at the trial of the suit herein specified, to appoint an attorney to assist the regular district attorney, whose mutual duty it shall be to represent the interest of the Republic; and should said claimant fail in his suit, he shall be charged in bill of costs a tax fee of fifty dollars, in Texas treasury notes, which shall be collected by the sheriff, by levy and sale, without the usual credit of twelve months; and which shall be divided equally among said attorneys for the Republic, and shall be considered full compensation for the services of said attorneys.

Section 5. Be it further enacted, That before the trial of any suit provided for by this act, the district attorney may demand security for costs; and no claim shall be granted by a jury except upon the parol testimony of two good and creditable witnesses given in under oath.

Sec. 6. Be it further enacted, That upon good and sufficient cause shewn, the court may grant a new trial, either to the claimant or to the Republic; provided, that not more than one new trial shall be granted to either party; and further provided, that the Republic have the same number of peremptory challenges as the party suing for the land.

Sec. 7. Be it further enacted, That it shall be the duty of the successful claimant, upon his receipt of his certificate from the clerk of the district court, as before provided, to pay to the said clerk the sum of ten dollars, in Texas treasury notes, which shall cover all costs in and about said suit.

Sec. 8. Be it further enacted, That any individual herein required to take an affidavit who shall swear falsely, besides suffering all the pains and penalties of perjury, on conviction thereof before the district court, shall also be dismissed from office, and may be fined in a sum of not more than one thousand dollars, at the discretion of the court.

Sec. 9. Be it further enacted, That it shall be the duty of the claimant under this law to prove that he obtained a certificate from the board of land commissioners of the county where such suit is brought, and that the commissioners to investigate the land offices have not reported the same as genuine; but said certificate shall not be considered as any

evidence of the genuineness of the claim, and the same shall be proven, de novo, in the same manner as provided by the land law approved December the fourteenth, one thousand eight hundred and thirty-seven.

Sec. 10. Be it further enacted, That section sixth of the act to which this is a supplement be so amended that when certificates have issued to assignees, and have been, or may hereafter be, approved by the commissioners established under the provisions of the said act, it shall be the duty of the commissioner of the general land office to issue the patent in the name of the asssignee, whose name appears in the certificate; provided, that upon application for such patents, the person so applying shall be required to present or exhibit to the commissioner of the general land office a regular chain of transfer duly authenticated from the original claimant.

Sec. 11. Be it further enacted, That all individuals who are entitled to head-right certificates of the first class, and who have not yet received them from any other boards heretofore in existence, are hereby authorized to file their petition; and upon their going through all the formalities prescribed by this act, obtaining the verdict of a jury in their favor, and the certificate of the clerk approved by the judge, and their presentation of certificates authenticated as before provided, to the commissioner of the general land office, it shall be the duty of the commissioner to issue a certificate to said claimant, in form and manner as heretofore issued by the former boards of commissioners.

Section 12. Be it further enacted, That any person who conceives himself entitled to land, but has obtained a certificate from a board for too much land, he may deliver the same to the district judge of the county where the certificate was issued, who shall destroy the same; after which, he or she may apply for the quantity of land to which he or she may be entitled, and shall make the same proof and be entitled to the same privileges as required and granted by the provisions of this act.

Sec. 13. Be it further enacted, That this act take effect from and after its passage.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
ANSON JONES,
President pro tem. of the Senate.

Approved February 4th, 1841.

DAVID G. BURNET.

Exhibit T.

Sec. 2. The district courts shall be opened until the first day of July, one thousand eight hundred and forty-seven, for the establishment of head rights not recommended by the commissioners appointed under the act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants; and the parties suing shall produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application for the said certificates; and all certificates above referred to, not established or sued upon before the period limited, shall be barred; and the said certificates,

and all locations and surveys thereon, shall be forever null and void; and all relocations made on such surveys shall not be disturbed until the certificates are established as above directed.

Exhibit U.

An act supplementary to an act supplementary to an act to detect fraudulent land certificates and to provide for the issuing patents to legal claimants.

Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas in Congress assembled, That all suits contemplated by the first section of the act to which this is a supplement, shall be commenced on or before the first day of January, one thousand eight hundred and forty-four, and not thereafter.

Approved 14th, 1843.

Rule issued Dec. 1st, 1847.

District court.—Fall term, 1847.

THE STATE OF TEXAS, *county of Galveston.*

To the sheriff of said county, greeting:

You are hereby commanded to summon John De Young, district surveyor of the district of Galveston, and Samuel P. Browne, deputy surveyor of the said district, if they [are] to be found in your county, to be and appear before the honorable the judge of the district court of the first judicial district, at a court now in session within and for the county of Galveston, on Saturday, December the 4th, 1847, to shew cause why a peremptory writ of mandamus should not be granted, commanding and requiring them, the said De Young and Browne, to make and cause to be made a certain survey mentioned in a petition of Thomas League, filed in this court on the thirteenth day of June last, as prayed in the said petition.

Herein fail not, and have you then and there this writ.

Witness James W. Moore, clerk of said court, this 1st day of December, A. D. 1847, with the seal of said court.

[SEAL.] Attest: J. W. MOORE, *Clerk.*

Sheriff's return.

Issued December 1st, 1847. Rec'd and executed same day by citing the within named persons to appear before the court on Saturday the 4th December, 1847.

P. BRYAN, *Sheriff G. C.*
By M. J. HOWARD, *Deputy.*

Filed Dec. 1, 1847.

GALVESTON, *Nov. 27th*, 1847.

I, John De Young, one of the defendants in a cause in the district court, for the county of Galveston, entitled Thomas M. League vs. John De Young, etc., and Samuel P. Browne, etc., wherein the petition was

filed the thirteenth day of June last, hereby waive the right of receiving a copy of the said petition, and of the papers therein referred to.

JOHN DE YOUNG.

Filed Dec. 1st, 1847.

GALVESTON, *Nov. 27th*, 1847.

I, Samuel P. Browne, one of the defendants in a cause in the district court, for the county of Galveston, entitled Thomas M. League vs. John De Young, etc., and Samuel P. Browne, etc., wherein the petition was filed on the thirtieth day of June last, hereby waive the right of receiving a copy of the said petition, and the papers herein referred to.

SAMUEL P. BROWNE.

Answer filed Dec. 21, 1847.

District court, Nov. term, 1847.

STATE OF TEXAS, *county of Galveston.*

JOHN DE YOUNG, district surveyor of the district of Galveston, and Samuel P. Browne, deputy surveyor of the same district, defendants,
ads.
THOMAS M. LEAGUE, plaintiff.

And the defendants in the above entitled cause, by their attorney, tender this their general demurrer and exception, and say that plaintiff's petition is not sufficient in law.

[Because it does not appear, by reason of any thing set forth in said petition, or any part or exhibit thereof, that the said plaintiff has any cause of action against said defendant; and because this is in truth a suit against the State of Texas, as the party defendant, and it does [not] appear from said petition, or any part or exhibit thereof, that said suit was instituted by permission or the consent of said State.

Made part of the transcript by consent.

EBEN'R ALLEN, *for Appellant.*
JOHN W. HARRIS, *Att'y Gen'l.*]

And the defendants also demur and except especially, and say that plaintiff's petition does not contain or set forth such a cause of action as entitles him to the relief he prays for; and they assign the following causes, to wit:

1st. Because it does not appear by the provisions of the laws set forth in said petition as being in force in Texas at the time of the adoption of the constitution of the Republic of Texas as well as long before, and since that time, and not inconsistent with said constitution, nor by any of the manifestoes or declarations, laws or ordinances, decrees or instructions forming parts of said petition, and set forth in the several exhibits thereof (A, C, D, E, F, G,) nor by the constitution of the Republic of Texas (marked B,) nor by all the aforesaid manifestoes or de-

clarations, laws or ordinances, decrees or instructions and constitution, nor by reason of any thing else set forth in said petition, or any part or exhibit thereof, that the people of Texas, in their corporate national capacity, or in any form of political organization adopted by them, as an independent Republic or State after their secession from the Mexican confederacy in the year 1835, did contract or promise, to and with, all or any persons then residing in the country, or therein residing at the date of the declaration of independence, to wit, on the second day of March, 1836, to concede, grant, or perfect to them, all or any such rights, titles, or claims to land constituting the public domain of Texas, or any portion thereof, as the plaintiff in said petition pretends the said people in their said corporate national capacity as an independent Republic were, and in their existing political organization as a State are, bound to concede, grant, and perfect.

2d. Because it does not appear, by reason of any thing set forth in said petition, or any part or exhibit thereof, that the said supposed rights and claims to land of the persons who were residing in Texas on the day of the declaration of independence aforesaid, or at any time or times previously thereto in said petition mentioned, were, have been, or now are, by or by reason of said declaration, made and published on the seventh of November, A. D. 1835, and set forth in plaintiff's exhibit (marked C,) nor by the said ordinance, adopted on the thirtieth of November, A. D. 1835, to establish a provisional government in Texas, set forth in plaintiff's exhibit (marked D,) nor by the constitution of the Republic of Texas aforesaid set forth in the plaintiff's exhibit (marked B,) nor by reason of any thing in said declaration, ordinance, and constitution contained, nor by reason of any thing alleged or set forth in said petition, or any part or exhibit thereof, vested and established, as the plaintiff in his said petition alleges and pretends.

3d. Because the aforesaid constitution of the Republic of Texas, or any part thereof, was not and is not in law a contract between the people of Texas, in their corporate national capacity as an independent Republic, and any persons or class of persons then citizens of said Republic, or before its adoption residing in Texas, as plaintiff in his said petition pretends, nor can the same or any part thereof, in law, operate as such a contract; and it does not appear by said petition, or in any thing therein, or in any part or exhibit thereof, that the people of Texas, in their corporate political capacity, ever promised, contracted, or agreed, touching the lands comprising the public domain aforesaid, in manner and form as the plaintiff alleges and pretends.

4th. Because it does not appear by or by reason of said petition, or any thing therein or in any part or exhibit thereof contained, that the act of the Republic of Texas, set forth in plaintiff's exhibit, (marked H,) entitled "an act to reduce into one act, and to amend the several acts relating to the establishment of a general land office," alleged to have been passed on the fourteenth day of December, A. D. 1837, or any provisions or part thereof, ever was, in law, a contract, or part of a contract, between the people of Texas aforesaid and the persons or class of persons herein before mentioned; and it does not appear by the said

petition, or any part thereof, or by reason of any thing therein, or in any exhibit thereof contained, that the people aforesaid, by and through their senators and representatives in Congress duly assembled, ever promised, contracted, or agreed, in manner and form as the plaintiff in his said petition pretends, to and with every person who might become the ——— holder or owner of any of the certificates in said act mentioned and referred to, that every such certificate should be sufficient evidence to authorize any lawful surveyor or deputy surveyor to survey, for any person owning or holding such certificate, any lands which he might point out agreeably to all the laws which did then or might thereafter exist on that subject.

5th. Because it does not appear by the said petition, or by any part or exhibit thereof, or by any thing therein contained, that the people aforesaid contracted or agreed, to and with Colin T. McRea, the alleged original grantee of the certificate set forth in said petition, dated the twenty-first day of June, A. D. 1838, and alleged to have been issued to him, the said Colin T. McRea, for one league and one labor of land, by the board of land commissioners for the county of San Augustine, nor to and with the said plaintiff as the assignee, holder, or owner of the said certificate, that the said certificate should be sufficient evidence to authorize any lawful surveyor or deputy surveyor to survey for the plaintiff, as such assignee, owner, or holder thereof, any lands forming a portion of the public domain aforesaid.

Wherefore it does not appear by the said petition, or any part or exhibit thereof, or by reason of any thing therein contained, that the said John De Young, as district surveyor for the district of Galveston, or the said Samuel P. Browne, as deputy surveyor of and for the said district, were at the time of the making of the demands mentioned in the said petition, and set forth as exhibit (marked K) as a part thereof; or now are bound, or that it then was or now is the duty of them, or either of them, to survey or cause to be surveyed for the plaintiff the lands designated, as pointed out by the plaintiff in and by his said demands; nor that the refusals of the said officers, or either of them, to make or cause to be made the said demanded survey, or any or either of their actings and doings in said petition mentioned, amounted to, or amounts to, a neglect or breach of official duty on the part of both or either of the said defendants.

And all of the aforesaid causes of exception and demurrer the said defendants are ready to verify; and they pray the judgment of the court thereon.

And the said defendants, saving and reserving unto themselves all other exceptions and every other exception, that may or might be taken to the said plaintiff's petition, or any part or exhibit thereof, or any thing therein contained, come, and in accordance with the provisions of an act of the legislature of the State of Texas, approved on the thirteenth day of May, A. D. 1846, and entitled "an act to regulate proceedings in the district courts," and with the rules adopted by the supreme courts of said State for the government of the district courts, at the December term of said supreme court, A. D. 1846, a copy of which

"act" and "rules" are herewith filed as a part hereof, marked exhibits (1 and 2); and defend, &c., when, &c., and for plea say that the plaintiff ought not to have and maintain his aforesaid action against them. Because, notwithstanding any thing stated or alleged in plaintiff's petition touching the supposed act mentioned therein, and set forth as a part thereof in the plaintiff's aforesaid exhibit marked H, the same being called "an act entitled an act to reduce into one, and to amend the several acts relating to the establishment of a general land office," they say that the said supposed act is and was from the beginning unconditional and void, in this, viz., it never was approved or signed by the President of the Republic of Texas, but, on the contrary, was vetoed by him; and said act was never passed in the manner prescribed by the constitution of said Republic, for they say that when the said act was vetoed by the President, it was returned to the house in which it originated, with his reasons for not approving and for vetoing the same, which said reasons were never spread upon the journals of said house before said act was reconsidered and finally acted upon by the said house; and the said defendants further say, that the said act being so disapproved and vetoed, the vote on the reconsideration and final action of the Senate upon the same was not recorded by ayes and noes, and this they are ready to verify; wherefore, they pray judgment of the court of the matters herein above pleaded touching the supposed act. And as to so much of said petition as alleges that the defendants, and each and every officer of the State of Texas, as well as the State itself, *is* and *was* barred and estopped from stating, setting up, or alleging that said last named act is unconstitutional and void, the defendants say that they are not, and ought not, in law, by reason of any thing in said petition set forth, to be so estopped and barred, because they say it does not appear by the said petition, or any part or exhibit thereof, that either the Republic of Texas or said State of Texas has ever saved, preserved, or recognised the said last named supposed act as a good and valid law touching the right of action in plaintiff's petition set forth against defendants, and this they are ready to verify; wherefore they pray the judgment of the court if they ought to be so estopped and barred, as the plaintiff in his petition alleges and pretends.

And for further plea in this behalf, as to so much of the said petition as alleges, imports, or pretends that the certain act of the Congress of the Republic of Texas, entitled "an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants," set forth in the plaintiff's exhibit marked Q, and a certain other act of the last named Congress, entitled "an act prohibiting the location of fraudulent land claims," set forth in the plaintiff's exhibit marked R, and a certain other act of said Congress, entitled "an act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, set forth in the plaintiff's exhibit marked S, and the eleventh article of the constitution of the State of Texas, set forth in plaintiff's exhibit marked T, are or were from the beginning, either in whole or in part, in any manner or degree, unconstitu-

tional, void, and of none effect, by virtue of the constitution of the Republic of Texas or of the State of Texas, or by virtue of the Constitution of the United States of America, these defendants say that neither by the aforesaid acts, nor the aforesaid eleventh article of the Constitution of the State of Texas, nor any of them, nor any part of them, was or is he entitled to have any land surveyed for him thereon, and the defendants aver that the plaintiff has, as he admits, never established the said claim, or ever attempted so to do; all which they are ready to verify, and of all which they pray judgment of the court.

And for further plea in this behalf defendants say, that subsequently to the passage of the aforesaid act, entitled "An act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of a general land office," to wit, on the twenty-ninth day of January, A. D. 1840, the certain act in the last plea above mentioned, entitled "An act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants," was passed by the Congress of said Republic of Texas, and a board of land commissioners, as therein provided for, was duly elected and qualified for the county of San Augustine; that the said board discharged their duty in said last named county, as required by the provisions of said last named act, (being first commissioned and sworn as the said act required, and fully authorized to act under the same,) and that they failed and refused to report to the commissioners of the general land office the certificate described in the plaintiff's petition as one which had been granted to a legal claimant; and also failed and refused to report the said certificate to the said commissioner, as either genuine or legal.

And the defendants further say, that they, and each of them, were prohibited, under the pains and penalties of the certain other act in the last above plea mentioned, entitled "An act prohibiting the location of fraudulent land claims," from making, or causing to be made, any survey upon the certificate described in the plaintiff's petition, until the same should be previously so recommended and reported, as aforesaid; or unless the same should be previously established and certified, in accordance with the provisions of the certain other act in the said last above plea mentioned, entitled "An act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants," or in accordance with the provisions of the eleventh article of the constitution of the State of Texas. And defendants aver that the said certificate never was so established or certified, in accordance with the provisions of the said last mentioned act, as is admitted by the plaintiff; and they say that the plaintiff was not, by reason of the premises, at the time or times of making said demands in his petition set forth, entitled to any location or survey of lands, upon, or by virtue of, said certificate; all of which they are ready to verify, and all of which they pray judgment of the court.

And for further plea in this behalf, touching the allegation contained in the said petition, that the provisions of the last above mentioned act have long since determined and expired, by reason of the certain other act of the Congress of said republic, entitled "An act supplementary to

an act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants," set forth in the plaintiff's exhibit marked U, the defendants say that, by the eleventh article of the constitution of the State of Texas, an adequate and sufficient mode was provided for the plaintiff to have established his said claim, if he so could have done, at any time after the adoption of said constitution up to the day of the commencement of this suit, and that the plaintiff was in law bound to have so established the said claim, before he could be entitled to have any land conveyed [surveyed] for him thereon; and the defendants aver that the plaintiff has, as he admits, never so established the said claim, or even attempted so to do; all which they are ready to verify, and of all which they pray the judgment of the court.

And the said defendants, for further plea in this behalf, say, that the said plaintiff has not sued, in such manner and form, and at such time, as to be permitted "to produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application" for his said certificate; and they rely upon said eleventh article of the constitution of the State of Texas, and upon said act, entitled "An act to detect fraudulent land certificates," and to provide for issuing patents to legal claimants therein reiterated and enforced, (together with any and all other constitutions and acts, or parts thereof in the plaintiff's petition mentioned, or in the exhibits thereof set forth, so far as they may be applicable to this his plea,) by way of limitation to the remedy or remedies to the plaintiff's pretended rights, in manner and form as in his petition stated and set forth; and this they are ready to verify. Wherefore they pray judgment of the court, if he ought to have and maintain his aforesaid action against them.

And the said defendants, relying upon all and each of their said pleas, together with their general and special demurrers and exceptions, together with the causes, and each of them, above assigned by way of answer, further answering, allege and shew for cause why they, and each of them, refused to make the survey required and demanded of them by the plaintiff, the above and foregoing answer, and the matters therein, and in the several parts contained, including their demurrers and exceptions, and the several causes above in their behalf assigned; and they aver that, by reason of the premises hereinbefore set forth, the plaintiff is not, nor was at the time of filing his said petition, nor at the time of making his said demands of right, lawfully entitled to have the said demanded land surveyed for him, or that they, the said defendants, or either of them, whether as district surveyor or deputy surveyor, are not, nor were, in duty bound to make, or cause to be made, said survey; and that no one, nor all of their refusals, actings, and doings mentioned and complained of by the plaintiff in his said petition, are, or have been, in violation of law, or of the legal rights of the plaintiff, or amount to any breach or neglect of official duty on the part of both or either of these defendants; wherefore they pray the premises considered, that the rule nisi granted by the court in this case be discharged, and

that the plaintiff take no peremptory writ of mandamus by his petition; and that they be hence dismissed, with their costs, &c.

HIRAM B. WALTER,
District att'y for the 1st judicial dist. of the State of Texas, attorney for the defendants.

Exhibit 1.

An act to regulate proceedings in the district courts.

Section 1. Be it enacted by the legislature of the State of Texas, That no person who is an inhabitant of this State shall be sued out of the county where he has his domicil, except in the following cases, viz: First. In case of married women, who must be sued in the county where her husband has his domicil. Second. In case the defendant is a transient person; in which case he may be sued in whatever county he may be found. Third. In cases where there may be two or more defendants residing in the different counties; in which cases the plaintiff may institute suit in any county where any of such defendants may reside. Fourth. In cases where a person has contracted to perform an obligation in any particular county; in which case suit may be instituted in that county, or where the defendant has his domicil. Fifth. In cases of executors, administrators, or guardians of an estate, or trustees, who must be sued in the county in which the estate is administered. Sixth. In cases of fraud, and also in case of defalcation of public officers; in which cases suit may be instituted in the county where the fraud was committed, or where the defalcation occurred, or where the defendant has his domicil. Seventh. Where the defendant has committed some crime or offence, for which a civil action in damages may be commenced; on which cases suit may be instituted in the county where the crime or offence was committed, or in the county where the defen[dant] has his domicil: Provided, that the prosecutions by the State for crime or offence, shall always be in the county where such crime or offence was committed. Eighth. In cases where the suit is for a slave, animal, or other moveable property; in which case suit may be instituted in whatever county such property may be found, or where the defendant resides. Ninth. In cases where the defendant has inherited an estate, concerning which suit is commenced; in which case suit may be instituted in the county where the estate principally lies. Tenth. In cases for the foreclosure of mortgages; in which cases suit may be instituted in the courts where the mortgaged property, or any part thereof, may be. Eleventh. In cases where the recovery of land, or damages thereto, is the object of a suit; in which cases suit must be instituted where the land, or a part thereof, is situated.

Institution of suits.

Sec. 2. Be it further enacted, That no civil suit shall be instituted, nor shall any process be had in any suit, on Sundays, except in cases of attachment or sequestration.

Sec 3. Be it further enacted, That all civil suits in the district court

shall be commenced by petition, filed in the office of the clerk of the district court.

Sec. 4. Be it further enacted, That no person shall be sued as endorser, or guarantor, or as surety, unless suit shall have been or is simultaneously commenced against the principal; except in cases where the principal resides beyond the limits of the State, or in a county that is not organized, or where he is insolvent.

Sec. 5. Be it further enacted, That the petition may be filed by the plaintiff or attorney, and shall set forth clearly the names of the parties and their residence, if known, with a full and clear statement of the cause of action, and such other allegations pertinent to the cause as he may deem necessary to sustain the suit; and also a full statement of the nature of the relief he requests of the court.

Sec. 6. Be it further enacted, That the clerk or deputy, receiving such petition, shall endorse thereon the day on which it is filed, and also the number thereof; and shall enter the suit in a docket to be kept for that purpose, in the order in which it is filed, stating, in a convenient form, the number of the suit, the names of the parties and their attorneys, the object of the suit, the officer's return, and all subsequent proceedings in the suit, specifying the time they were had.

Sec. 7. Be it further enacted, That any party to a suit, at any time before final judgment, upon motion of the other party, or of any officer of the court interested in the costs accruing in such suit or action, may be ruled to give security for costs; and if such rule be entered against the plaintiff, and he fail to comply therewith on or before the first day of the next term, the suit shall be dismissed.

Sec. 8. Be it further enacted, That every person, whether plaintiff or defendant, who shall make affidavit before the clerk that he is too poor to pay the fees of office, shall be entitled to receive from such clerk all such process as will enable him to prosecute or defend his suit free of costs.

Sec. 9. Be it further enacted, That it shall be the duty of the clerk, when a petition is filed and the regulations hereinbefore provided are complied with, to issue a writ of citation, directed to the sheriff or other proper officer of the county or counties in which the petition alleges that the defendant or defendants are, requiring him to summon the defendants to appear at the proper term of the court, then and there to answer the plaintiff's petition, a certified copy of which shall accompany each writ or citation; and, if there be more than one defendant, the clerk shall issue a writ or citation to each, accompanied with a copy of the petition.

Sec. 10. Be it further enacted, That the style of all writs and process shall be "The State of Texas," and shall be tested in the name of the clerk of the court from which it is issued; it shall also state the name of the parties to the suit, the time and place of holding the court; shall be dated and signed by the clerk, with the seal of the court affixed, excepting subpœnas, which may be issued without the seal; and the clerk issuing any process shall mark thereon the day on which it is issued.

Sec. 11. Be it further enacted, That when it is alleged in the petition, or appears in the course of a suit, that any defendant is not an inhabitant of the State, that he is absent therefrom, or that he is a transient person, upon the plaintiff, his agent, or attorney making affidavit to the truth thereof, it shall be the duty of the clerk to issue a citation or writ to the sheriff, or other proper officer of the county, setting forth therein, in addition to the requisites of an ordinary citation, a brief statement of the substance of the petition or suit in which the same is issued, requiring him to cite the defendant by making publication of the citation in some newspaper published in the county, if there be one, but if not, then in the nearest adjoining county where there is one, for eight successive weeks previous to the return day of such process.

Sec. 12. Be it further enacted, That in case where the plaintiff shall allege in his petition, or where it shall appear in the course of the suit, that it is important that the heirs, successors, or representatives of any named person, parties to such suit, and the name of such heirs, successors, or representatives are unknown, upon the plaintiff, his agent, or attorney, making affidavit to the truth thereof, it shall be the duty of the clerk to issue a like citation or writ, directed to the sheriff or other proper officer of the county, requiring him to cite such heirs, successors, or representatives, where names are unknown, giving the names of the original deceased party, their ancestor, by making publication of the citation in some newspaper published in the county, if there be one, but if not, then in the nearest adjoining county where there is one, for twelve successive weeks previous to the return day of such process; when such notice is given, and no appearance is entered within the time allowed for pleading, the court shall appoint an attorney to defend, on behalf of such heirs, successors, or representatives, and proceed in the cause as in other cases.

Sec. 13. Be it further enacted, That any party to a suit, his agent or attorney, may waive the necessity of the issuance of the service of any writ or process required to be served on him in the suit, and accept such service thereof: Provided, That such waiver or acceptance shall be made in writing, signed by such party, his agent, or attorney, and filed among the papers of the suit as a record.

Sec. 14. Be it further enacted, That the sheriff, or other officer receiving any process, shall endorse thereon the day on which he received it, and shall execute the same, where not otherwise directed by the writ or citation, by delivery to the party or parties in person, upon whom he is required to serve it; a copy thereof, and a copy of the petition accompanying it, if there be one, if the party can be found; when the process directs other mode of service, it shall be executed according to the requirements of the process.

Sec. 15. Be it further enacted, That all civil process, except subpœnas and notices, shall be returnable on the first day of the term after which it is issued, unless it be issued too late to be served before such term, when it shall be returnable on the first day of the term thereafter; shall be served at least five days before the return day thereof, exclusive of the day of service and the return day, and shall be returned on or

before the first day of the term of the court to which it is returnable: Provided, that writs of habeas corpus, mandamus, attachment for contempt, and capias in criminal cases may be made returnable at the same term in which they were issued, or in vacation, then to such reasonable [within such reasonable] time as the Judge, in his discretion, may direct.

Sec. 16. Be it further enacted, That subpœnas for witnesses and necessary notices in the course of a suit, may be executed and returned at any time before the trial of a suit in which they are issued; subpœnas shall be served by being read to the witnesses, and service thereof may be accepted by any witness in writing on the back thereof.

Sec. 17. Be it further enacted, That the return of the sheriff or other officer shall be made in writing on the back of the process or attachment [attached] thereto; shall state fully the time and manner of service, and shall be served by him officially.

Sec. 18. Be it further enacted, That any mistake or informality in a return may be corrected by the officer at any time, under the direction of the court.

Sec. 19. Be it further enacted, That when any process shall have been improperly served, or shall not have been returned, or shall have been returned without service, it shall be the duty of the clerk upon the application of any party interested, his agent or attorney, to issue other process, directed to the sheriff or other officer of the same, or any other county, as the party applying may direct.

Sec. 20. Be it further enacted, That every clerk, sheriff, or other officer failing or neglecting or refusing to perform any duty directed by this act, shall be liable to fine for contempt in a sum of not less than ten nor more than one hundred dollars, at the discretion of the court having cognizance of the same, and also to damages with costs, at the suit or action of any person injured.

Sec. 21. Be it further enacted, That process against a sheriff shall be issued to or served by the coroner of the county, if there be one; but if there be no coroner, or if he be unable to act, then such process may be issued to and served by any constable of the county, the return thereof always to be in the same mode as directed for service by sheriffs.

Sec. 22. Be it further enacted, That every party upon whom any valid process is served, shall obey the requisites of such process under such penalty as may be prescribed by law.

Pleadings.

Sec. 23. Be it further enacted, That upon the second day of the meeting of every district court, the Judge shall call over the docket of causes, and in all cases where the process has been served according to law (except such as have been brought by appeal from an inferior court) in which the defendant has not filed an answer, he shall enter judgment by default against such defendant.

Sec. 24. Be it further enacted, That if the defendant does not file his answer before the fifth day after the meeting of the court, the plaintiff may have such judgment by default made final, on such fifth day,

or at any time thereafter; and if the cause of action is liquidated and proven by any instrument in writing *in writing*, the Judge or clerk shall assess the damages of the plaintiff; but if the cause of action is unliquidated and not proven by instruments in writing, a jury shall be sworn to try the cause ex parte, and assess the damages of the plaintiff.

Sec. 25. Be it further enacted, That no judgment shall be rendered in any case of attachment, unless the citation has been served in the ordinary mode, or publication is herein provided.

Sec. 26. Be it further enacted, That in suits where service of the process has been made by publication, no judgment final by default shall be taken at the term of the court to which such process is returnable, but all such suits shall be continued to the next term, when they shall be called over by the Judge with the other suits, and judgment final may be entered, as in cases where the ordinary service has been made.

Sec. 27. Be it further enacted, That if in any suit the defendant shall file his answer before the fifth day after the meeting of the court, the judgment entered against him by default shall be set aside.

Sec. 28. Be it further enacted, That the plaintiff or his attorney may enter a discontinuance on the docket of the clerk in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon.

Sec. 29. Be it further enacted, That the defendant, in his answer, may plead as many several matters, whether of law or fact, as he shall think necessary for his defence, and which may be pertinent to the cause: Provided, that he shall file them all at the same time, and in due order of pleading.

Sec. 30. Be it further enacted, That no plea of non est factum shall be received or admitted from any party other than such as are sued as the representatives of other persons, unless the party pleading the same shall make affidavit to the truth thereof; and no plea of non est factum shall be received or admitted from any person sued as the representative of another, unless some suspicion be cast on the instrument upon which such plea is founded by the affidavit of such representative.

Sec. 31. Be it further enacted, That no plea in abatement, except a plea to the jurisdiction of the court, or where the truth of the plea appears of record, shall be received or admitted, unless the party pleading the same, or some other person for him, shall make affidavit to the truth thereof.

Sec. 32. Be it further enacted, That all the pleas filed shall be taken up and disposed of by the court in due order of pleading under the direction of the court.

Sec. 33. Be it further enacted, That all pleas in abatement, and all other dilatory pleas or demurrers, not involving the merits of the cause, shall be determined during the term at which they are filed, if the term of court continue long enough.

Sec. 34. Be it further enacted, That the pleadings in all suits may be amended under the direction of the court, and upon such terms as it may prescribe, at any time before the parties announce themselves

ready for trial and not thereafter; but no amendment shall prevent a suit from being tried at the same term it may be made, unless the court be satisfied that such amendment operate as a surprise to the opposite party.

Sec. 35. Be it further enacted, That no paper shall be considered as filed in the proceedings of any cause, unless the clerk shall have endorsed thereon the day on which it was filed, and sign his name thereto.

Sec. 36. Be it further enacted, That in all suits where there are two or more plaintiffs or defendants, and one or more of them die, if the cause of action survive to the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants, the suit shall not abate by reason of such death, but upon suggestion of such death being entered upon the record at the instance of either party, his agent or attorney, the suit shall proceed in the name of the surviving defendant or defendants as the case may be.

Sec. 37. Be it further enacted, That in all suits where either party shall die between verdict and judgment, the judgment shall be entered as if both parties were living.

Sec. 38. be it further enacted, That in all suits where the plaintiff may die before verdict, if the cause of action survive, the suit shall not abate therefor, but it shall be lawful for the legal representatives of such plaintiff, his agent or attorney, to appear, and upon suggestion of such death being upon record, such representative may be made party to such suit, and the same shall proceed in his name; but if no such suggestion be made, as aforesaid, at the first term of the court after such death, it shall be the duty of the clerk upon the petition of the defendant, his agent or attorney, to issue a scire facias, which shall be served upon the legal representative of such deceased plaintiff, requiring him to appear and prosecute said suit, and after the service of said scire facias, if he fail so to do, during the first four days after the meeting of the court, to which such scire facias is returnable, the defendant may on motion have such suit discontinued; and in cases where executors or administrators shall be plaintiffs in any suit, and shall die, or cease to be such executor or administrator before verdict, the suit shall not abate therefor, but the suit may be continued in like manner by the person succeeding him in the administration of the same estate, or the suit may in like manner be discontinued.

Sec. 39. Be it further enacted, That in all suits where the defendant may die before verdict, if the action survive, the suit shall not abate therefor, but upon a suggestion of such death being entered upon the record in open court, or upon a petition of the plaintiff representing that fact, being filed in the clerk's office, it shall be the duty of the clerk to issue a scire facias to the legal representatives of such defendant, and upon the return thereof executed, such representative shall be made a party to such suit, and the same shall proceed against him; and in case where an executor or administrator shall be defendant, and shall die, or cease to be such executor or administrator, before verdict, the suit shall not abate therefor, but the suit may be continued in like manner against the person succeeding him in the administration of the same.

Sec. 40. Be it further enacted, That no suit instituted by a feme sole shall abate by her marriage, but upon a suggestion of such marriage being entered on the record, the husband may make himself a party to such suit, and prosecute the same, as if he and his wife had been originally plaintiffs in such suit.

Sec. 41. Be it further enacted, That no suit instituted against a feme sole shall abate by her marriage, but upon a suggestion of such marriage being entered on the record in open court, or upon a petition representing that fact being filed in the clerk's office, it shall be the duty of the clerk to issue a scire facias to the husband of such defendant, and upon the return thereof executed, the husband shall be made a party to such suit, and it shall proceed as if such husband and wife had originally been defendants in such suit: Provided, that nothing herein contained shall be so construed as to make the husband liable for any debts contracted by said feme sole before marriage.

Sec. 42. Be it further enacted, That when a suit has been instituted in the name of one person for the use of another, and the person in whose name the suit has been instituted shall die before verdict, it shall not be necessary to revive such suit in the name of the representative of such person, but such suit may be prosecuted in the same manner as though such death had not happened; but such death shall be suggested on the record, and the person for whose use such suit was instituted shall be responsible for all costs, in the same manner as the person whose name is used would have been, and execution for such costs may be issued against him, as in ordinary cases.

Sec. 43. In all cases where minors may be defendants to a suit, and it shall be shewn to the court that such minors have no guardians within the State, it shall be the duty of the court to appoint a guardian to such minors for the purpose of defending such suit.

Sec. 44. Suits for title, or for the possession of lands, or for any right attached to or growing out of the same, or for any injury or damage done thereto, may be instituted by executors, administrators, or guardians, in like manner as they could have been by their testator or intestate, and judgment in such cases shall be as conclusive as if rendered in favor of their testator or intestate: Provided, however, that such judgment may be set aside, by any person interested, for fraud or collusion on the part of such executor or administrator.

Sec. 45. When there are several defendants in a suit, and some of them are served with process in due time, and others not so served, the plaintiff may either discontinue as to those not so served, and proceed against those that are, or he may continue the suit until the next term of the court, and take new process against those not served; and no defendant against whom any suit may be discontinued according to the provision of this section, shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such discontinuance [had been] entered as to such defendant: Provided, that this section shall not be so construed as to allow a plaintiff to discontinue as to the principal, and take judgment against the endorser or surety jointly sued.

Sec. 46. The principal and the endorser or surety upon any instrument in writing, may be joined in the same suit, but no judgment in any such suit shall be rendered against the endorser or surety, unless judgment is at the same time rendered against the principal, except where the plaintiff discontinues as to the principal, because he resides beyond the limits of the State, or because he is insolvent, in which cases he may discontinue and take judgment.

Sec. 47. Where there are several defendants in a suit, and some of them appear and answer, and others make default, an interlocutory judgment by default may be entered against those who do not answer, and the cause may proceed against the others; but only one final judgment shall be given in the suit.

Sec. 48. Whenever several suits may be pending in the same court by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court for the same plaintiff, against several defendants which may be joined, the court in which the same are pending may, in its discretion, order such suits to be consolidated.

Sec. 49. When any plaintiff shall bring in the same court several suits against the same defendant or defendants, for causes of action which may be joined, he shall recover the cost of one action only, and the costs of the other actions shall be adjudged against him, unless sufficient reason appear to the court for instituting several actions.

Sec. 50. By an exception of non-tenure of parts of any lands or tenements, for which any suit or action may be instituted, the suit shall not be abated but for the quantity of which non-tenure shall be alleged.

Sec. 51. In controversies respecting lands or hereditaments, possession of part shall not be construed as possession of the whole.

Sec. 52. In any suit founded on any instrument or note in writing, under the seal of the party charged therewith, the defendant may, by special plea, impeach or inquire into the consideration thereof, in the same manner as if such writing had not been sealed; but no pleas impeaching the consideration of any instrument or note in writing, under seal, shall be admitted, unless supported by the affidavit of the defendant, or some person for him, stating that the facts set forth in said plea are true, as far as stated of his own knowledge, and that he believes them to be true, as far as stated from the information of others.

Sec. 53. There shall be a motion docket, to be kept by the clerk, in which he shall enter all motions filed in the court; the number of the suit in which they are made, if it relates to a suit pending; the names of the parties and their attorneys, with a brief statement of the nature of the motion.

Sec. 54. All motions relating to a suit pending, which do not go to the merits of the case, may be disposed of at any time before the trial of the cause; but no motion in the nature of a general demurrer, or which relates to the merits of the case, shall be decided before the cause is called in regular order for trial.

Sec. 55. All motions, not relating to a suit pending, shall be taken up and disposed of in the order as other suits are required to be.

Sec. 56. In all appeals from a justice's court to the district court, all of the original papers, together with the appeal bond, and a certified copy of the record of the proceedings before such justice, shall be filed with the clerk of the district court on or before the first day of the term to which such appeal is taken; all such appeals shall be tried de novo, but neither party shall introduce any claim that was not before the justice on the trial below. And upon the call of the docket by the judge on the second day after the meeting of the court, if no appearance is entered on the docket for the defendant in the original suit, a judgment by default shall be entered against him; and if no appearance has been entered on the docket for the defendant, before the expiration of the third day after the meeting of the court, the plaintiff may, on and after the fourth day, have such judgment made final; and if the demand is certain, and proven by any instrument of writing, the judge or clerk shall issue [assess] the damage of the plaintiff; if otherwise, then the damage shall be assessed by a jury in all such appeals; where an appearance is entered on the docket for the defendant, before the expiration of the third day, [it] shall be taken up and disposed of in regular order.

Sec. 57. In the trial of appeals from justices' courts, when either party shall make oath that he has no other evidence to prove any fact, material to the prosecution or defence of his suit, except his own oath, he shall be sworn and examined touching such facts; and the opposite party, in such cases, shall have the privilege of being sworn as to the same facts.

Sec. 58. In appeals from justices' courts, taken by the party against whom the judgment below was rendered, when the judgment of the district court shall be against him for the same, or a greater amount than the judgment of the court below, and costs in both courts; but if the judgment of the district court shall be against him, for a less amount than the judgment below, then the appellant shall recover his costs only in the court below, and shall pay the costs of the district court. When the appeal is taken by the party in whose favor the judgment below is rendered, and the judgment of the district court is for a greater amount than the judgment below, he shall recover his costs in both courts; but if the judgment of the district court be in his favor, for the same or a less amount than the judgment below, he shall recover costs only below, and shall pay the costs of the district court.

Sec. 59. In appeals from justices' courts, taken by either party to the suit, when the judgment of the district court is for the same, or a greater amount against the appellant, than the judgment of the court below, it shall be rendered jointly and severally against all the obligors in the appeal bond.

Sec. 60. In all appeals from probate courts to the district court, a complete transcript of the record of all the proceedings had in the cause below, certified under the hand and seal of the clerk of the probate court, shall be filed with the clerk of the district court, on or before the first day of the term to which such appeal is taken; and all such appeals shall be tried de novo, upon the application of either party to such

appeals. It shall be the duty of the clerk of the district court to issue a subpœna duces tecum, for the clerk of the probate court to bring into the district court, on the trial of such appeals, all original papers in his office which may be needed on such trial. All judgments upon appeals from probate courts shall be certified to the probate court to be carried into effect.

Evidence.

Sec. 61. In all suits, civil or criminal, the clerk shall, at the request of either party, their agent, or attorney, issue subpœna for witnesses, directed to the sheriff or other officer of the county where such witnesses reside, with subpœnas; shall state the names of parties to the suit, the time and place, when and where, such witnesses are required to appear, and the parties at whose instance such witnesses are summoned.

Sec. 62. Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him; and if any witness, after being duly summoned, shall fail to attend, he may be fined by the court in any sum not exceeding one hundred dollars, and an attachment may issue against the body of such witness to compel his attendance: Provided, however, that no such fine shall be imposed, nor shall such attachment issue, in a civil suit, until it shall be shewn to the court, by affidavit of the party, his agent, or attorney, that reasonable compensation and mileage has been tendered or paid to such witness.

Sec. 63. Witnesses shall be allowed a compensation of one dollar for each and every day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid, on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk. And such compensation, and mileage of witnesses, shall be taxed in the bill of costs against the party cast.

Sec. 64. Any witness refusing to give evidence may be committed to the county jail, there to remain without bail until he shall consent to give evidence.

Sec. 65. All negroes and Indians, and all persons of mixed blood descended from negro ancestry, to the third generation, inclusive, though one ancestor of each generation may have been a white person, shall be incapable of being a witness in any case whatever, except for or against each other.

Sec. 66. Witnesses shall be privileged from arrest, except in cases of treason or felony and misdemeanor, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode.

Sec. 67. Depositions of witnesses in civil suits, residing in the State, may be taken in the following cases: First. Where the witness is about to leave the State, or the county where the suit is to be tried. Second. Where witnesses, by reason of age, sickness, or official [duty,] shall be unable to attend the court. Third. Where the witness resides without the county in which the suit is pending. Fourth. Where the witness

is a female. And such deposition shall be taken in the following manner, viz: the party wishing to take such depositions shall file interrogatories in the court where the suit is pending, and shall cause the opposite party, his agent, or attorney, to be served with a copy thereof, and also with a notice, that he will apply to the clerk of such court for a commission to take the answers of the witness to said interrogatories; such notice shall state where the witness resides, and the suit in which the deposition is to be used. On or after the fifth day after the service of such notice and copy of interrogatories, it shall be the duty of the clerk, upon application of the parties filing such interrogatories, his agent, or attorney, to issue a commission, directed to any chief justice, notary public, or clerk of the district court, residing in the county where it is stated in the notice such witness resides, requiring him to cause such witness to appear before him, and take his answers, under oath, to such interrogatories; a certified copy of which shall be annexed to said commission. Such commission shall be signed by the clerk issuing the same, and sealed with the seal of the court.

Sec. 68. Upon the receipt of such commission by any chief justice, notary public, or clerk of the district court of the county to which it is directed, unless the witness shall voluntarily appear, it shall be his duty to issue a subpœna directed to the sheriff or other officer of the county, requiring him to summon the witness to appear and answer interrogatories, at a time and place to be named in such subpœna; and if such witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, the said chief justice, notary public, or clerk, shall have power to issue an attachment against such witness, and to fine and imprison him in like manner as by this act the district court is empowered to do in like cases.

Sec. 69. Upon the appearance of the witness voluntarily, or in obedience to a subpœna, it shall be the duty of the said chief justice, notary public, or clerk of the district court to take the answers of the witnesses to such interrogatories, which shall be reduced to writing, and shall be signed and sworn to by the witness; the officer taking such answers shall certify under his hand and seal that they were signed and sworn to by the witness before him, and shall seal them up in an envelope, with the interrogatories and commissions, with his name across the seal and endorsed on the envelope, the names of the parties to the suit, and the names of the witnesses, and shall direct the package to the clerk of the court from which the commission issued.

Sec. 70. Such depositions may be returned to the court either by mail or by private hand; if sent by mail, the postmaster mailing the same shall endorse thereon that he received them from the hands of the officer before whom they were taken; and the clerk taking them from the post office shall endorse on them that he received them from the post office, and sign his name thereto; if sent by private hand, the person delivering them into court shall make affidavit before the clerk that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and have undergone no alteration.

Sec. 71. When a witness in any civil suit resides beyond the limits of the State, either party may take his deposition by filing interrogatories in the court where the suit is pending, and serving a notice with a copy of such interrogatories upon the opposite party, his agent or attorney, in the same manner as required for depositions of witnesses residing in the State, on or after the fifth day of the service of such notice and a copy of interrogatories; it shall be the duty of the clerk with whom such interrogatories are filed, upon the application of the party filing them, his agent or attorney, to issue a commission directed to any judge of any court of record within the State or county, where it *it* is stated in the notice that such witness resides, requiring such judge to cause the witness to come before him and to take his answers to said interrogatories, a certified copy of which shall be annexed to such commission; the commission shall be signed by the clerk issuing it, and sealed with the seal of the court; the judge to whom any such commission is directed, upon the appearance of the witness before him, shall take his answers to the interrogatories, which shall be reduced to writing, and shall be signed and sworn to by the witness, when the judge taking them shall certify under his hand and the seal of his court that the answers were signed and sworn to by the witness, before him, and seal them up in an envelope, with the interrogatories and the commission, with his name across the seal, endorse and direct the envelope in like manner as is required for depositions taken within the State; and all depositions so taken may be returned into court in like manner as depositions taken within the State.

Sec. 72. In any suit where one party may file interrogatories for the purpose of taking the depositions of a witness, the opposite party may file cross interrogatories, at any time before the commission issues, and a certified copy of such interrogatories shall be attached to the commission by the clerk issuing the same, and all such interrogatories shall be answered, signed, sworn, and certified to, in like manner and form as the answers to the interrogatories, and shall be sealed up and returned with them.

Sec. 73. If any deposition shall contain any testimony not pertinent to the interrogatories and cross interrogatories propounded, such testimony shall be deemed surplusage, and shall be stricken out by the court.

Sec. 74. Depositions taken and returned in the manner provided by this act, may be read as evidence upon the trial of any suit in which they are taken, subject to all legal exceptions, which might be made to the interrogatories and answers of the witness, were [the witness] personally present before the court giving evidence; provided, however, that no deposition of a witness, except when the witness is a female, shall be permitted to be read in evidence, unless the party offering the same shall first make oath that such witness is without the limits of the county where the suit is pending, or that such witness is dead, or that by reason of age, sickness, or of official duty, such witness is unable to attend the court.

Sec. 75. When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testi-

mony of a witness to be used in such suit, he may file his petition to the court of the county where such suit could be instituted, representing such facts, and the names of the persons known to be interested adversely to the petition, which petition shall be served in the same manner as other petitions are required to be served, after which depositions may be taken and returned by any of the parties to such petition, in like manner as provided for in this act; when suits have been instituted, and all such depositions, when so taken and returned, shall be subject to like exceptions as all depositions and shall be entered on the records of the court, and may be used in any suit or suits which may thereafter be instituted between any of the parties to the petition, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits. (*Vide Sec. 75 at the foot of this page, for the probable meaning of the section.)

[*Sec. 75. When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he may file his petition in the court of the county where such suit could be instituted, representing such facts and the names of the persons known to be interested adversely to the petition, which petition shall be served in the same manner as other petitions are required to be served; after which depositions may be taken and returned by any of the parties to such petition in the manner as provided for in this act; when suits have been instituted, all such depositions so taken and returned, shall be subject to like exceptions as all other depositions, and shall be entered on the records of the court, and may be used in any suit or suits which may be thereafter instituted by or between any of the parties to the petition, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits.]

Sec. 76. Both parties shall be considered as having a joint interest to [in] all depositions when cross interrogatories have been filed and answered, and either party shall have the right to use such depositions on trial.

Sec. 77. Depositions after being returned to court may be opened by the clerk at the request of either party or his counsel, and the clerk shall endorse on such depositions upon what day, and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party.

Sec. 78. No objections to the form of depositions or to the manner of taking them, in any suit, shall be heard, unless they are in writing, and notice thereof is given to the opposite counsel, before the trial of the suit commences: Provided, said depositions shall have been filed in the court at least one entire day before the day on which the trial commences.

Sec. 79. In all civil suits where it shall be shewn to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has deceased since the commencement of the suit, and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories cannot be served

upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served; or if he be deceased, and if the person entitled to claim, by or through such deceased defendant, have not made themselves parties to the suit, and are unknown, the parties wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court shall thereupon cause notice to be published in some newspaper for thirty days, stating the number of the suit, the name of the original parties, in what court the suit is pending, the name and residence of the witness to whom interrogatories are propounded, and that the commission will issue on or after the thirteenth day after such publication to take the deposition of such witness; at the expiration of which time, such clerk shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases; and depositions taken under such notice shall have the same force and effect as those taken after personal service of the notice and interrogatories upon a party or his attorney.

Sec. 80. Be it further enacted, That either party to a civil suit may propound written interrogatories to the other: Provided, the party propounding them shall make oath before the clerk of the court where suit is pending, or before any of the officers before whom the answers of such interrogatories may be sworn to, that the answers to such interrogatories are material to support his demand, or to aid him in his defence, and that he knows of no other person by whom he can prove the same facts, which may be annexed to, or included in, the petition or answers; and when not so annexed or included, a copy of such interrogatories shall be served upon the parties whose answers are sought, his agent or attorney, at least five days before the commencement of the trial of the suit in which they are propounded: And provided, further, that no defendant shall be permitted to propound interrogatories to the plaintiff, unless they are annexed to, or included in his answer, until such defendant has filed his answer.

Sec. 81. Be it further enacted, That the party interrogated shall answer on oath and categorically, each of the questions put to him, unless he cannot do so without criminating himself; and if he refuse or neglect to do so, the facts concerning which he shall have so refused or neglected to answer, shall be taken for confessed.

Sec. 82. Be it further enacted, That in answering a question the party shall simply confess or deny the fact, but the party may state such other facts tending to his defence, as are closely connected with the fact on which he has been interrogated, and his declaration in such case shall have as much effect as his answer to the question itself; and if such answers contain other testimony than that permitted by this section, the court, upon exception being made thereto in writing, shall cause so much of said answer as contains such other testimony to be stricken out.

Sec. 83. Be it further enacted, That the party interrogated may except, in writing, to any of the questions as not pertinent, and the court shall decide summarily whether he ought to answer or not; if ordered

to answer, he shall do so, otherwise the facts unanswered shall be deemed confessed.

Sec. 84. Be it further enacted, That the answers to such interrogatories shall be in writing, sworn to, and signed by the party answering, and if answered within the county where the suit is pending, may be sworn to before any officer authorized by law to administer oaths, who shall make a certificate thereof; if answered in any other county within the State, they shall be sworn to before some notary public, chief justice, or clerk of the district court, who shall make a certificate thereof, and affix his seal of office; if answered out of the State, they shall be sworn to before some judge of a court of record, and have the certificate of such judge authenticated with the seal of the court.

Sec. 85. Be it further enacted, That the answers of the party interrogated, subject to the exceptions herein provided for, shall be taken entire, and shall be evidence, but they shall not include adverse testimony, and may be destroyed by written proof, or by the oath of two witnesses or of one such witness, corroborated by strong circumstantial evidence.

Sec. 86. Be it further enacted, That when any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing, charged to have been executed by the other party, or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as evidence, without the necessity of proving its execution, unless the party by whom, or by whose authority, such instrument or note in writing is charged to have been executed, shall file his affidavit, in writing, denying the execution thereof; and the like rule shall prevail in all suits against endorsers and securities upon any note or instrument in writing; when any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by the affidavit of the executor or administrator of such testator or intestate.

Sec. 87. Be it further enacted, That if suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this State, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted in like manner as such original might be; but if the defendant shall plead and file an affidavit under oath that such original instrument or note in writing has not been executed by him or by his authority, the clerk of the court having the custody of such original shall, on being summoned as a witness, attend with the same on trial of the issue.

Sec. 88. Be it further enacted, That in suits brought by partners, it shall not be necessary to prove the partnership, unless the defendant shall, in his answer, deny that the plaintiffs are partners, or carry on business as described in the petition, which denial shall not be admitted or received, unless verified by the affidavit of the party making it.

Sec. 89. Be it further enacted, That copies of the records of all public officers and courts of this State, certified under the hand and seal (if

there be one) of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible; translated copies of all records in the land office, certified to under the hand of the translator and the commissioner of the general land office, attested with the seal of said office, shall be prima facia evidence in all cases where the original records would be evidence.

Sec. 90. Be it further enacted, That every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been or may be so recorded, after being proven or acknowledged in the manner provided for by the laws in force at the time of its registration, shall be admitted as evidence without the necessity of proving its execution: Provided, that the party who wishes to give it in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him, shall, within one day after such notice, file an affidavit stating that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the suit an affidavit, stating that any instrument of writing recorded as aforesaid has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in like manner as the original could be.

Sec. 91. Be it further enacted, That copies of all conveyances and other instruments of writing between private individuals which were filed in the office of any alcalde or judge in Texas, previous to the first Monday in February, 1837, shall be admitted as evidence in like manner as the originals might be, and shall have the same force and effect as such originals: Provided, such copies shall be certified under the hand and seal of the officer with whom such conveyance and instrument of writing are now deposited.

Sec. 92. Be it further enacted, That the printed statute books of this State shall be evidence of the private acts therein contained, and the printed statute books of the several States and Territories of the United States, purporting to have been printed under the authority of such States and Territories, and a certified copy under the seal of the secretary of this State of any act or resolution contained in the printed statute books of any State or Territory of the United States, purporting to be printed under the authority of such State or Territory, and copies of private bills certified to by the secretary of state, and attested by his seal of office, which is deposited in the office of the secretary of this State, shall be evidence in like manner.

Practice.

Sec. 93. Be it further enacted, That all suits in which answers are filed in due time, shall be tried or disposed of in the order in which they stand on the docket, or were filed, unless otherwise ordered by the court, with the consent of the parties or their attorneys.

Sec. 94. Be it further enacted, That suits shall not be continued

until after answer filed, unless by operation of law, or consent of parties, or on the following terms: First, on the first application, the party, his agent or attorney, shall make affidavit that he cannot go safely to trial for the want of testimony material to his cause, and that he has used due diligence to procure the same; second, on the second application, no suit shall be continued except it be for want of material testimony, which testimony, the party applying, his agent or attorney, shall set forth to the court the diligence he has used to procure the same, the cause of failure, if known, that the same testimony cannot be procured from any other source; and if it be on account of the absence of a witness, he shall also state the name and residence of such witness, and that application is not made for delay, but that justice may be done, and the statement shall be verified by affidavit.

Sec. 95. Be it further enacted, That if, from any cause, a district court shall not be held at the time prescribed by law; or if, from any cause, the business before the court be not determined before the adjournment thereof, such business, of whatsoever nature, so undetermined, shall stand continued until the next succeeding term.

Sec. 96. Be it further enacted, That whenever, in the commencement or progress of any suit, it shall be necessary to serve any notice on any party to such suit, such notice may be served either by an officer authorized by law to serve original process of the court in which suit is brought or may be pending, or by any person who would be a competent witness upon the trial of such suit; every such notice may be served in like manner as an original writ, either on the party or his attorney of record; and the return of such notice when made by an officer, or when made by any other person and verified by the affidavit of such person, shall be received as evidence of the facts contained; subject however, to be repelled by contrary proof.

Sec. 97. Be it further enacted, That whenever in any suit it shall appear to the court that an investigation of accounts or examination of vouchers is necessary for the purposes of justice between the parties, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as may be; and the report so made shall, under the direction of the court, be given in evidence to the jury, subject, however, to be impeached by evidence from either party; and the court shall award reasonable compensation to such auditors, which shall be allowed and taxed in the bill of costs, to be recovered by the successful party as in other cases.

Sec. 98. Be it further enacted, That the court shall appoint interpreters when necessary, who shall be sworn truly to interpret, and shall be entitled to the same pay therefor as by law is allowed to witnesses. Papers read in evidence, although not under seal, may be carried from the bar by the jury in their retirement.

Sec. 99. Be it further enacted, That no plaintiff shall be permitted to suffer a nonsuit on trial after the jury have retired from the bar; after the argument of a cause, and before the jury retires from the bar, the judge may deliver a charge to the jury, under the following restrictions and regulations; the judge shall not in any case, civil or criminal,

charge or [comment] on the weight of evidence or testimony; and he shall so frame his charge as to submit questions of fact solely to the decision of the jury, and he shall decide on and instruct them as to the law arising on the facts, distinctly separating all questions of law from questions of fact; and no judge shall in any case make any further charge, unless on the application of the jury or a party.

Sec. 100. After the charge of the judge either party or his attorney may present in writing, but without argument, such charges or instructions as he desires to be given to the jury, which the judge shall deliver to the jury in whole or in part, or refuse to deliver the same, as he may think proper; but where the charge asked, or any part thereof, is refused to be given, the judge shall write down distinctly what portions of the same he refuses, and what portion he gives, and also subscribe his name thereto; all of which shall be filed by the clerk and constitute a part of the records of the case, subject to revision for error by the supreme court in the same manner as if a regular bill of exceptions had been signed.

Sec. 101. Whenever in the progress of a cause, or of the trial thereof, either party is dissatisfied with a decision or opinion of the court, he may except thereto, and on reducing his exceptions to writing, and presenting them to the judge for allowance, the judge shall allow and sign his name to the same, if they be true; and if he refuses to do so, he shall certify in writing therein the cause of such refusal. If any judge shall refuse to sign a bill of exceptions, such bill may be signed by three bystanders, who are reputable inhabitants of the State; and the court shall permit such bill to be filed, and every bill of exceptions signed by the judge or bystanders, and filed in the court, shall form a part of the records in the cause in which the same may be filed.

Sec. 102. When any judge shall refuse to permit a bill of exceptions signed by bystanders to be filled, and shall have certified such bill to be untrue, either party in the suit may take affidavits, giving the adverse party notice of the time and place of taking such affidavits, not exeeding five in number, in relation to its truth; and such affidavits, when taken, shall be filed in the clerk's office within five days after the trial of the suit, and on appeal or writ of error copies of such affidavits shall be annexed to and form a part of the record in the cause.

Sec. 103. The supreme court shall admit as a part of the record of the cause every bill of exceptions taken therein, upon its appearing to the satisfaction of the court that the truth of the case is fairly stated in such bills, that the same was taken according to law, and that the court refused to permit such bill to be filed; and the truth of every such bill of exceptions shall be tried by the affidavits required by this act to be taken and filed in the clerk's office.

Sec. 104. After verdict of twelve men, judgment shall not be stayed or reversed for want of form.

Sec. 105. When there are several counts in a petition, and entire damages are given, the verdict shall be good, notwithstanding one or more of such counts may be defective.

Sec. 106. In all civil actions of assault and battery or slander in the

district court, if the jury find under the sum of twenty dollars, the plaintiff shall not recover costs, but each party shall be taxed with the cost incurred by him.

Sec. 107. All vouchers, views, essoigns, and also trials by wager of battle and wager, shall stand repealed.

Sec. 108. In civil suits the jury may find and return a special verdict in writing in issues made up under the direction of the court, declaring the facts proved to them; any verdict so found shall be conclusive between the parties as to the facts found.

Sec. 109. New trials may be granted in all civil cases, on such terms and conditions as the court may direct; but not more than two new trials shall be granted to either party in the same cause, except the jury have been guilty of some misconduct or erred in matter of law.

Sec. 110. No motion for a new trial shall be allowed after a motion in arrest of judgment.

Sec. 111. New trials may be granted, as well when the damages are manifestly too small as when they are excessive.

Sec. 112. All motions for new trials in arrest of judgment, or to set aside a judgment, shall be made within two days after the rendition of verdict, if the term of the court shall continue so long, if not then before the end of the term, and every such motion shall be accompanied by a written specification of the grounds on which it is founded, and none other than those specified shall be heard. All motions for new trials in arrest of judgment shall be determined at the term of the court at which such motion shall be made.

Sec. 113. The costs of all new trials may either abide the event of the suit or shall be paid by the party to whom such new trial shall be granted, according to the order of the court to be made at the time of granting such new trial.

Sec. 114. When any judgment shall be arrested or set aside, the court shall allow the proceedings in which the error was to be amended, in all cases where the same amendment might have been made before trial, and the cause shall again proceed according to the practice of the court; but the party in whose proceedings the first error was committed shall pay the costs incurred thereby.

Sec. 115. Judgments in the district court shall, in all civil cases, be rendered so as to conform to the pleadings, the nature of the case as proved, and the verdict thereon.

Sec. 116. Any person for a bona fide debt may, without process, appear in person, or by attorney, and confess judgment for such debt; but in such cases a petition shall always be filed, and the justness of the debt sworn to by the person in whose favor the judgment is confessed; and when confessed by attorney, the warrant of attorney shall be filed.

Sec. 117. Every judgment, by confession duly made, shall operate as a release of all errors in the record thereof, but may, at any time, be impeached for fraud or other equitable causes, by third parties.

Sec. 118. In suits against executors, administrators, or guardians, for the recovery of money due from, or damages incurred by, their testator or intestate, or ancestor, whence verdict shall be given against them, or judg-

ment final by default shall be taken against them, the judgment shall be, that the plaintiff recover his debt or damages, as the case may be, and costs, to be paid in due course of administration; and no execution shall issue on such judgment. When the suit is instituted for the enforcement of a specific lien on personal property, the judgment shall be, that the plaintiff recover his debt and damages and costs, and that the property subject to such lien shall be seized and sold by the sheriff, if it can be found; and if the proceeds of such sale shall be applied to the judgment and costs, and if there be any excess, after such payment, the same shall be paid to the defendant; and if the proceeds of such sale shall be insufficient to pay such judgment and costs, the balance shall be paid in due course of administration, but no execution shall issue thereon; when the suit is for the foreclosure of a mortgage on real estate or negroes, the heirs interested in the mortgaged property shall be made parties to the suit by due notice served, and the subsequent proceedings shall conform to the rules prescribed as above in cases of specific liens on personal property.

Sec. 119. All judgments or decrees for the enforcement of specific liens on the foreclosure of mortgages, against persons other than executors or administrators, shall be, that the plaintiff recover his debt, damages, and costs, and that an order of sale shall issue to the sheriff of the county where the property, subject to such lien or mortgage, can be found, directing him to sell the same, if found, as under execution; and if the proceeds of such sale be insufficient to pay the judgment and costs, or if the property cannot be found, further execution may be issued for such balance, or for the debt, against such defendant, as the case may be.

Sec. 120. In all cases where the district or supreme courts shall decree a conveyance of real estate, or the delivery of moveable property or effects, they may by decree pass the title of such property without any act to be done on the part of the defendant, when it shall be proper.

Sec. 121. On all motions, the court may give or refuse cost at their discretion, unless where it is otherwise provided.

Sec. 122. In all cases of law, (except motions,) where judgment shall be given for defendant or appellee, he shall recover his costs against the plaintiff or appellant, and have execution for the same; and in all such cases where judgment shall be given for the plaintiff or appellant, if not otherwise provided by law, he shall recover his costs, against the defendant or appellee, and have execution for the same.

Sec. 123. When any plea in abatement shall, upon argument in any court of law, be adjudged insufficient, and when by any interlocutory judgment any other part of the pleadings shall be judged insufficient, all costs occasioned by such insufficient pleading shall be adjudged against him who committed the fault.

Sec. 124. All taxes imposed on law pleadings shall be included in the bill of costs.

Sec. 125. The law of costs shall not be interpreted as penal laws.

Sec. 126. Each party shall be responsible to the officers of court for the costs incurred in any suit by himself.

Sec. 127. There shall not be allowed in any cause, or bill of costs, the fees of more than two witnesses to any one fact.

Sec. 128. On the rendition of any judgment in a suit where notice or service of process has been given or made by publication only, and heard ex parte, the court shall make out and incorporate with the records of the case a statement of the facts proven therein, on which the judgment was founded.

Sec. 129. When judgment has been rendered in any suit, on notice or service by publication only, and on ex parte hearing, the party defendant may, at any time within two years after the rendition of such judgment, file his petition of review for the reversal thereof in the court rendering the judgment; but process on such judgment shall not be suspended unless the petitioner give bond, with two or more securities, to be approved by the clerk, in double the amount of the judgment or value of the property adjudged, payable to the party in whose favor such judgment was rendered, conditioned that he will prosecute his petition for review to effect, and perform such judgment as may be rendered thereon by the court, in case the decision be against him; and in case property has been sold under judgment before process thereon was superseded by petition and bond as aforesaid, the same shall not be restored on the reversal of the judgment, but the petitioner shall have judgment for the amount paid or collected thereon, or for damages by him sustained in consequence thereof; minors, married women, and persons non compos mentis, shall have two years to file such bill of review after their respective disabilities are removed under the restrictions above stated in this section.

Sec. 130. In all suits where the plaintiff shall die after judgment, upon a suggestion of such death being entered on the record in open court, or upon a petition representing that fact being filed with the clerk by the legal representative of such plaintiff, it shall be the duty of the clerk to issue a scire facias to the defendant in such suit; and upon the return thereof executed, the court shall enter a decree reviving such judgment in the name of the legal representative of such plaintiff, unless the defendant shall appear and show cause why the same should not be done, within the first four days after the meeting of the court to which such scire facias is returnable; and in cases where an executor, administrator, or guardian is plaintiff in any suit, and shall die, or cease to be such executor, administrator, or guardian, after judgment, such judgment may in like manner be revived in the name of the person succeeding him in the guardianship or administration of the same estate.

Sec. 131. In all suits where the defendants shall die after judgment, upon a suggestion of such death being entered on the record in open court, or upon a petition being filed in the clerk's office, by the plaintiff representing that fact, it shall be the duty of the clerk to issue a scire facias to the legal representative of such defendant, and upon the return thereof executed, the court shall enter a decree reviving such judgment against the legal representative of such defendant, unless such legal representative shall appear and show cause why the same should not be done, within the first four days after the meeting of the court to which such scire facias is returnable.

Sec. 132. When in the record of any judgment or decree of any district court, there shall be any mistake, miscalculation, or misrecital of any sum or sums of money, or of any name or names, and there shall be among the records of the proceedings in the suit in which such judgment or decree shall be rendered, any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be the duty of the court in which such judgment or decree shall be rendered, and the judge thereof in vacation, to amend such judgment or decree thereby, according to the truth and justice of the case: Provided, that the opposite party, his agent or attorney of record, shall have had reasonable notice of the application for such amendment; and if the transcript of such judgment or decree at the time of such amendment, or at any time thereafter, shall be removed to the supreme court, it shall be the duty of that court, upon inspection of such amended record, [to cause the original record] to be brought before it by certiorari, if need be, to affirm such judgment, if there be no other error apparent in such record.

Sec. 133. When any bond taken by virtue of any distress for rent, or execution, by miscalculation or mistake, shall be conditioned for a larger sum of money than by law ought to have been required thereby, or where a verdict shall be rendered for more damages than the plaintiff shall have demanded by his suit, and judgment shall be rendered accordingly, and the court in which such judgment shall be rendered shall have adjourned to another term without release of such excess having been made, it shall be lawful for the plaintiff, at any time before the record of such judgment shall be removed into the appellate court, at any future term of the court in which judgment shall be rendered, to release in open court any such excess, or he may in vacation release the same by deed, under his hand and seal, witnessed by the clerk or deputy clerk of such court, and filed and recorded among the papers of the court; and such release, made in either of the forms aforesaid, shall cure any error of such excess. If the record of any such judgment shall be removed into the appellate court before such release shall be made, it shall be lawful for the defendant in error to make such release as aforesaid in the appellate court, and thereupon the said court, after reviving the judgment, shall proceed to give such judgment as the court below ought to have given if the release had been made or filed therein.

Sec. 134. Any party believing himself aggrieved by any judgment or decree of the district court, may appeal to the supreme court from such judgment or decree, during the term of the court at which such judgment or decree was rendered; and no petition, writ, or citation, or other proceeding whatever, shall be necessary, other than the appellant's giving notice in open court of his intention to appeal, which notice shall be entered of record.

Sec. 135. After the trial of any cause, when the party has given notice of appeal, or intends to give such notice, it shall be the duty of the parties respectively to make out a clear and explicit statement or bill of the facts given in evidence on the trial of the cause, and to submit the same to the opposite party or his attorney for inspection during the

term; and if the parties or their attorneys agree as to the facts given in evidence, they shall sign and seal the same, and submit it to the judge for approval and signature, who shall also sign it, and the statement so made shall be filed as a part of the record of the cause; but if on inspection [of] the statements offered, the parties cannot agree, or the judge do not approve or sign them, they shall submit their respective statements to the judge presiding at the trial, who, from the statements so furnished him, and his own knowledge, shall, during the term at which the trial was had, make out a correct and exact statement of the facts of the cause as given in evidence, they shall sign and seal the same, and submit it to the judge for approval and signature, who shall sign it, and the statement so made shall be filed as a part of the record of the cause; but if, on inspection of the statements aforesaid, the parties cannot agree, or the judge do not approve or sign them, they shall submit their respective statements to the judge presiding at the trial, who from the statement so furnished him and his own knowledge, shall during the term at which the trial was had, make out a correct and exact statement of the facts of the cause as given in evidence, and shall sign and seal the same, and cause it to be filed in the records of the cause as a part thereof.

Sec. 136. Any party taking an appeal shall, within twenty days after the term of the court at which the judgment or decree was rendered, enter into bond with two or more sureties, to be approved by the clerk of the court, in double the amount of the debt, damages, or the value of the slaves or other personal property adjudged, conditioned for the prosecution of the appeal with effect, and performing the judgment, sentence, or decree of the supreme court, in case the decision of the said court shall be against the appellant.

Sec. 137. Where the judgment is rendered for the recovery of lands, the judgment below shall operate as a specific lien upon the lands so recovered; but in such case the appeal bond shall only be required for the costs of suit and damages on appeal.

Sec. 138. In case the party be unable to give the appeal bond required, such party may nevertheless appeal, by giving security for no more than the costs and damages of the appeal; but in that case, the judgment of the court below shall operate as a lien upon all the property of the appellant, and the sheriff shall take possession of his personal property, and keep possession of the same, or as much thereof as will be sufficient to satisfy the judgment of the appellate court, during the pendency of the appeal, unless the appellant should execute a bond, made payable to the appellee, with at least one good and sufficient security, whose solvency is to be judged by the sheriff, conditioned that such personal property shall be forthcoming, to be sold in satisfaction or part satisfaction of the judgment, that may be rendered by the appellate court.

Sec. 139. That when, by appeal or otherwise, a case shall be taken from the district court to the supreme court, the clerk of the district court shall immediately make up a full and perfect record of all proceedings in such case; and shall, on application of either party, give to such

party an attested copy of such record, with a taxation of all costs that have accrued thereon, and shall endorse on such copy the day on which it was demanded, and the day on which it is delivered, and sign his name as clerk thereto; and if, by reason of delay or neglect of any clerk to give a transcript of the record in any case, the same shall not be filed in the supreme court in due time, or if the record be erroneously or incorrectly made up, so that the supreme court cannot proceed thereon to final judgment, such clerk shall, in either case, upon conviction thereof before any court of competent jurisdiction, be adjudged guilty of a misdemeanor in office, and shall be fined in a sum not exceeding two hundred dollars, to the use of the State.

Writs of Error.

Sec. 140. The clerks of the several district courts shall grant writs of error upon any final judgment or decree rendered in their court, upon the petition of any party interested; upon the filing of any such petition, the clerk shall issue a citation, directed to the sheriff of the county where the opposite party is alleged to reside, together with a copy of the petition, commanding him to cite such party to be and appear before the supreme court at its next term after the citation is issued, and defend said writ; which citation and copy of petition shall be served by the sheriff to whom it is directed, and shall be returned to the court from which it issued; and all such citations shall be returnable in thirty days after the issuing thereof; and if the party is a non-resident of the State, or cannot be found, the citation may be served on the attorney of record; if any such citation shall not be served, the clerk shall issue an alias or pluries citation forthwith. Upon the return of any such citation served, the clerk shall immediately make out a complete transcript of all the proceedings in the suit upon which the writ is obtained, and also the petition for the writ of error, and the citation issued with the return thereon, and deliver it to either party on application, and under the same rules and penalties as provided in case of appeals. No such writ of error shall operate as a supersedeas, nor shall a supersedeas issue with any such writ, until the party obtaining the same shall have filed with the clerk issuing such writ of error his obligation, with good and sufficient security, to be approved by the clerk, payable to the adverse party in a sum equal to double the value or amount of the judgment, order, or decree upon which the writ of error is obtained; conditioned, that the party obtaining such writ shall comply with the judgment, order, or decree of the supreme court upon such writ, and well and truly pay all such damages as may be awarded against him; which bond shall have the force and effect of a judgment against all the obligors upon which execution may issue, in case of forfeiture.

Sec. 141. The judges of the supreme or district court, only, shall grant writs of error on interlocutory judgments, and always on the same terms and conditions prescribed in the preceding sections for writs of error on final judgments; and, in cases where any writ of error shall be granted by a judge, the clerk shall issue the same citation, and perform the same duties prescribed for him when issued by himself.

Sec. 142. No writ of error shall be granted after the expiration of two years from the rendition of the judgment; minors, married women, and persons non compos mentis, shall have the same time, or two years after their respective disabilities are removed.

Sec. 143. That no writ of quia timet, attachment, or any other original writ or process, whereby the property of any citizen of this State be ordered to be seized or taken into custody, shall be issued by any civil officer of this State, or by order of any judge of the same, unless the party applying for such writ or process shall first make affidavit in writing of the truth of the matter set forth in his or her petition, and shall file, in the clerk's office of the court where the same is to be sued out and entered, a bond with good security, and in a sum at least double the value of the property to be seized and taken, or of the debts and damages claimed to be due, conditioned to pay all costs and damages which the party, against whom such suit or process may be sued out, shall sustain by reason of the wrongfully and unjustly suing out of the same: Provided, That this section shall not be construed to prevent the issuing of attachments by justices of the peace, under the provisions of any statute authorizing such attachment: And provided, also, That it shall not be so construed as to prevent the issuing of any writ or process to compel the attendance of defaulting witnesses or jurors in any court or tribunal to which they may have been legally summoned, or to any writ or process authorized by law in criminal cases.

Sequestration.

Sec. 144. The judges and clerks of the district court may grant writs of sequestration, upon petition under oath being presented to them in the following cases:

1st. When a person sues for the foreclosure of a mortgage, or other lien upon a slave or moveable property of any description, and makes oath that he fears the defendant or person in possession will injure or ill treat such slave, or waste such moveable property, or remove such slave or moveable property out of the country where it is at that time.

2d. When a person sues for the possession or title of a slave, or moveable property of any description, and makes oath that he fears the defendant or person in possession will injure or ill treat such slave, or waste such moveable property, or that he will remove such slave or moveable property out of the limits of the State during the pendency of the suit.

3d. When a married woman sues for a divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, or remove the same out of the limits of the State during the pendency of the suit.

4th. When any person sues for the title or possession of real property, and makes oath that he fears that the defendant or person in possession may make use of his possession to injure such property, or to waste the fruits or revenue produced by the same, or convert them to his own use.

5th. When any person sues for the title or possession of any proper-

ty, from which he has been dispossessed by force or violence, and shall make oath to such facts.

Sec. 145. No writ of sequestration shall issue unless the party petitioning for the same shall annex to his petition an affidavit stating the cause of such application, and shall also file with the clerk of the court, from which such writ is sued out, an obligation in favor of the defendant, for a sum equal to double the value of the property to be sequestered, with good and sufficient security, to be approved by such clerk, conditioned that the plaintiff or person suing out such writ will pay to the defendant all such damages as may be awarded against him, in case it shall be decided that such sequestration was wrongfully issued.

Sec. 146. The writ of sequestration shall command the sheriff or other officer to take into his possession the property described in the petition, if to be found in the county, and keep the same subject to the future order of the court, unless the defendant, or the person from whose possession such property is taken, shall replevy the same according to law.

Sec. 147. The defendant, whose property has been taken by writ of sequestration, shall have the right to retain the same by delivering to the sheriff or other officer, executing said writ, his obligation in favor of the plaintiff, with good and sufficient security, to be approved by the sheriff or officer taking the same, for an amount equal to double the value of the property sequestered; which obligation, if the property sequestered be slaves, or moveable property, shall be conditioned that he will not send away the same out of the county or the limits of the State according to the affidavit, that he will not make an improper use of them, and that he will have them forthcoming to abide the decision of the court, or that he will pay the value thereof in case the suit shall be decided against him. If the property sequestered be real property, the condition of said obligation shall be, that he will not injure said property, and that he will faithfully restore the fruits and revenue produced by the same, or pay their value in case he shall be condemned so to do; such obligation shall be returned to the court with the writ, and in case the suit is decided in favor of the party who sued out the sequestration, judgment shall be rendered against all the obligors in such bond, jointly and severally.

Sec. 148. The sheriff or other officer, while he retains possession of sequestered property, shall take care of and manage the same in a prudent manner; he may confide the same to the care of other persons, but he shall be responsible for their acts; and he shall be responsible to the party injured for any neglect or mismanagement by himself or those to whom he has confided the care and management of such property; and he shall be entitled to receive a just compensation, and all reasonable expenses therefor, to be determined by the court, and paid out of the proceeds of the property sequestered, if judgment be given in favor of the party at whose instance the property was sequestered, but if against such party, then to be paid by him.

Injunction.

Sec. 149. Be it further enacted, That all petitions for injunction and

answers thereto shall be verified by the oath or affirmation of the party filing the same.

Sec. 150. Be it further enacted, That no injunction shall be granted to stay any judgment or proceedings at law, except for so much of the recovery or cause of action as the complainant shall in his petition shew himself equitably entitled to be relieved against, and so much as will cover the costs.

Sec. 151. Be it further enacted, That no injunction to stay an execution shall be granted, but within six months after the judgment is obtained, unless it shall appear from the oath of the complainant or complainants, to the judge applied to, that such application has been delayed, in consequence of the fraud or false promises of the plaintiff in the judgment, practised or made at the time of, or after obtaining the judgment, or unless it shall appear on oath that the complainant or complainants was or were out of the State at the time of entering up judgment, so that application could not be made within the time aforesaid, in which cases injunctions may be granted at any time within two years, but not after.

Sec. 152. Be it further enacted, That writs of injunction granted by any judge of the supreme or district court, if to stay proceedings in a suit or execution on a judgment, shall be returnable to and tried in the district court of the county where the suit is pending, or the judgment was rendered; writs of injunction for other causes where the defendant is an inhabitant of the State shall be returnable to and tried in the district court of the county where the defendant, or if there be more than one, where either of the defendants, has his domicil.

Sec. 153. Be it further enacted, That no injunction writ shall be issued in any case until the complainant execute a bond to the adverse party, with good and sufficient security, in such sum as the judge granting the same shall deem sufficient to secure the amount or matter to be enjoined, and all damages and costs that may be occasioned by such injunction, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be adjudged against him, if the injunction be dissolved, either in whole or in part, the amount of such bond required shall be stated by the judge in his order, granting the injunction, and the bond shall be taken, and the security approved by the clerk issuing the injunction, who shall file such bond with the petition.

Sec. 164. Be it further enacted, That upon the dissolution of an injunction, either in whole or in part, when the collection of the money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon shall be assessed by the court at ten per cent. on the amount released by the dissolution of the injunction, exclusive of cost; and in all other cases the damages shall be assessed by a jury, sworn for that purpose; if neither party require a jury, the damages may be assessed by the court.

Sec. 155. Be it further enacted, That the court shall enter an interlocutory judgment or decree, according to the circumstances of the case, including the damages as assessed aforesaid, against the principal and

securities in the injunction bond, and may award execution thereon or enforce such decree in such manner as may be proper, according to the rules and practice of the court.

Sec. 156. Be it further enacted, That upon the dissolution of any injunction restraining the collection of money by an interlocutory order of the court, if after such interlocutory order, or dissolution, the petition shall be continued over for trial or hearing, as an original petition or suit, it shall be the duty of the court before whom such case is pending to require of the defendant or defendants bond and security, payable to the complainant or complainants, in double the amount of the sum enjoined, conditioned to refund to the complainant or complainants the amount of money, interest, and costs which may be collected of him or them in the suit or proceeding enjoined, in the event of such injunction being made perpetual on final hearing.

Sec. 157. Be it further enacted, That on any bond and security taken in pursuance of the preceding section, in the event of the injunction being perpetuated, on final hearing, the court may, on motion of the complainant or complainants, enter up judgment against the principal and sureties for such amount as may be shown to have been collected from or paid by him or them.

Sec. 158. All laws and parts of laws authorizing parties to propound interrogatories to each other, and authorizing writs of sequestration to be issued, are hereby repealed, and the following acts are also hereby repealed.

An act establishing the jurisdiction and powers of the district court, approved December 22, 1836; an act amending the judiciary laws of the Republic, approved December 18, 1837; an act to provide for taking testimony by interrogatories, approved Dec. 18, 1837; an act respecting the establishment of suits, approved May 24, 1838; an act to regulate proceedings in civil suits, approved Feb. 5, 1840; an act to regulate the granting and trial of injunctions, and to empower the judges of the district court to submit issues of fact to a jury in chancery cases, approved 25th January, 1841; an act to amend the act which provides the mode of taking testimony by interrogatories, to provide a mode for taking depositions, approved 9th January, 1841; an act to regulate bills of exceptions, approved January 28, 1841; an act to prescribe the mode of serving process and notice in certain cases, approved 3d Feb'y, 1844; an act to prescribe the duties of district judges in regard to charging juries, approved Feb. 5, 1844; and the 19th section of an act of limitations, approved 25th Jan'y, 1841, is also hereby repealed.

Approved 13th May, A. D. 1846.

Exhibit 2.

Rules for the government of the district courts, adopted by the supreme court, 23d April, 1847.

1.

In keeping the court docket, it shall be the duty of the clerk to designate the suits by regular consecutive numbers, called filed numbers;

and to mark upon each paper in every cause, the file number of the cause, to enter the name of the plaintiff's attorney upon the docket at the time of entering the suit, and that of the defendant's attorney at the time of filing his plea, motion, or answer.

2.

The clerk shall make out a term docket for each term, containing the causes not finally disposed of at the preceding term, noting the orders and proceedings in each cause, with their corresponding dates; this docket shall be numbered from 1 onward, consecutively, and the file number of each cause shall be marked thereon.

3.

The clerk shall note upon the term docket, and copy upon the court docket, the time of filing each answer, plea, or motion.

4.

No exhibit shall be considered as a part of any petition, answer, plea, or motion, unless the same, or a copy thereof, be filed contemporaneously with such motion, petition, answer, or plea; and the clerk shall mark, upon every such exhibit, the time of its being filed.

5.

The clerk shall record the proceedings of all causes in the order of time in which they occur; and in preparing transcripts for the supreme court this order must be observed, leaving a margin of sufficient width in which the clerk shall note the name of each proceeding, and the time of its occurring or being filed, and at the left hand lower corner mark the number of each page.

6.

No copies of subpœnas shall be inserted in the transcript, nor shall there be inserted any copies of commissions for taking depositions, interrogatories to witnesses filed, or the answers thereto, except in accordance with the provisions of the fifteenth rule.

7.

Transcripts shall be written on good foolscap paper, on one side only, and in a neat, legible hand; they must be fastened together at the upper end with tape, and sealed over the tie with the seal of the court on wax.

8.

The caption of each transcript shall be in the following form, viz:

STATE OF TEXAS, *county of* ———.

At a term of the district court, begun and holden at ———, within and for the county of ———, on the — on the (1st day of term) day of ———, A. D. ——— before the honorable ———, judge thereof, the following cause came on for trial, viz:

A. B., plaintiff,
vs.
C. D., defendant.

The transcript shall end with a certificate, under the seal of the court, that it contains a true copy of all the proceedings in the cause, and shall be signed by the clerk. It shall be folded in two folds, and endorsed as follows, viz:

A. B., appellant, or plaintiff in error,
vs.
C. D., appellee, or defendant in error.

From ——— county, D. C., ——— term, A. D. ———.

9.

As a strict observance of the foregoing rules by every clerk is indispensable, any dereliction of duty in this respect will in every instance be punished by the infliction of such penalties as are or may be prescribed by law.

10.

Issues of law touching the legal sufficiency of any petition, plea in abatement, answer, process or return, whether involving matter of substance or matter of form merely, shall be raised by exceptions filed by the party taking the same; every exception shall specify the distinct cause upon which it is based, where such cause is not apparent on the face of the pleading itself.

11.

The general exception that the petition or answer is not sufficient in law shall be allowed only when such insufficiency appears upon the face of the pleading to which this exception is applied; but a party excepting to any process, certificate, or return, shall in all cases be required to specify the particular causes of exception upon which he relies.

12.

The office of the general denial of the truth of all and singular the allegations contained in the petition, when pleaded by the defendant, is simply to throw the burthen of proof as to those allegations on the plaintiff. The defendant cannot be permitted, under this plea, to introduce special matters in evidence for his defence.

13.

Questions of law which have been once decided by the court under exceptions shall not be again raised in the same cause, by motion in arrest or otherwise.

14.

An answer to the merits shall not be considered as overruling excep-

tions taken in accordance with the preceding rules; if the party also answer, the matters excepted to shall be taken as confessed, only for the purpose of deciding the points raised by such exceptions; all questions arising under exceptions shall be determined by the court before the issues of fact shall be submitted to the jury.

15.

The statement of facts must in itself contain all the essential facts introduced in evidence, collected from the deposition used, and the oral testimony of witnesses examined at the trial; the evidence adduced by the plaintiff should be distinguished from that by the defendant; and, when deemed important by a party or the judge, the testimony given at the direct should be distinguished from that given on the cross examination; no commission, deposition, or interrogatories addressed to witnesses and filed, shall be made a part of the statement of facts, except by order of the judge, or by a special request of a party for some good cause, which must be shown upon the record.

16.

If a party obtains a new trial on terms, these shall be complied with on or before the first day of the next term, or the rule will stand discharged.

17.

The attorney first employed shall be considered the leading counsel in the cause, if present, and shall have control and management of the cause.

18.

But one counsel on each side shall examine or cross examine the same witness; and but two on each side shall argue to any incidental points or upon the main question to the jury, except in important causes, and by the special leave of the court.

19.

No agreement of counsel will be considered except it be in writing.

20.

No argument will be heard on the first application for the continuance of a cause.

Decree, Dec. 22, 1847.

Fall term, 1847, December 22, 1847.

THOMAS M. LEAGUE,
vs.
JOHN DE YOUNG, district surveyor of the district of Galveston, and SAMUEL P. BROWNE, deputy surveyor of the same district.

The attorney for the plaintiff, in open court, on a previous day of

2600.

this term, on motion, applied for a rule nisi, to issue against defendants, to appear and shew cause why a peremptory mandamus should not issue against them to cause them or either of them to make and execute the survey mentioned in the plaintiff's petition which had been filed with the clerk of the district court on the thirtieth day of June, 1847; and now, on the return of the rule executed on said defendants, to shew cause, &c., the same came on to be heard, and the court, being sufficiently advised, decrees and orders that the same be dismissed, and that the defendants recover of and from the plaintiff all the costs in this behalf expended.

Notice filed Dec. 23, 1847.

Notice of appeal by plaintiff in open court.

THOMAS M. LEAGUE,
vs.
JOHN DE YOUNG and SAMUEL P. BROWNE.

District court, fall term.

And now comes Thomas M. League, by his attorneys, in open court, [and] gives notice of appeal to the supreme court of the State of Texas.

JOHNSON, ALLEN & HALE,
Attorneys for plaintiff.

Appeal bond, filed and approved January 11, 1848.

THE STATE OF TEXAS, *county of Galveston.*

Know all men by these presents that we, Thomas M. League, Samuel Hinton, and Henry B. Martin, are held and firmly bound unto John De Young, district surveyor of the district of Galveston, and Samuel P. Browne, deputy surveyor of the same district of Galveston, in the just and full sum of one hundred dollars; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with scrawls for our seals, and dated the eleventh day of January, A. D. eighteen hundred and forty-eight.

The condition of the above obligation is such, that whereas the above named John De Young and Samuel P. Browne, in the district court in and for said county of Galveston, on the twenty-second day of December, A. D. 1847, recovered a judgment against the above bounden Thomas M. League for the cost incurred in a certain suit, wherein the said League was plaintiff and said De Young and Browne were defendants, from which judgment the said League appeals to the supreme court of the State of Texas:

Now, therefore, if the said Thomas M. League shall prosecute his said appeal with effect, and shall perform the judgment, sentence, or decree of the supreme court, in case the decision of the said supreme court shall be against him, said League, then this obligation to be null and void, otherwise to remain in full force and effect.

THOMAS M. LEAGUE, [SEAL.]
SAM'L HINTON, [SEAL.]
H. B. MARTIN. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. G. HALE.

STATE OF TEXAS, *county of Galveston.*

I, James W. Moore, clerk of the district court in and for said county, certify, that the foregoing transcript contains a true copy of all proceedings had in said cause of Thomas M. League vs. John De Young, surveyor, &c., et al.

Given under my hand and the seal of said [court,] this fifteenth day of January, A. D. 1848.

J. W. MOORE,
Clerk, D. C. G. C.

Bill of costs.—Clerk's fees.

Docketing cause 15, writ 50 - - -	$0 65
Filing papers 1 50, appearances 20 - -	1 70
Venire 10, judgment 50 - - - -	60
Taxing costs 25, record $120 - - -	120 25
Copy 120, certificate 50 - - - -	120 50
County tax - - - - -	3 00
	$246 70
Sheriff for serving writ - - - -	1 00
	$247 70

J. W. MOORE,
Clerk, D. C. G. C.

Filed in sup. court Feb. 7, 1848.

THOMAS M. LEAGUE
vs.
JOHN DE YOUNG et al. } No. 660.

Appeal from Galveston.

Extract from min. sup. court.

By consent, a special assignment of the causes of demurrer made a part of the record, March 25, 1848. (See Record, page 244, in brackets, and signed by the attorneys.)

This cause was submitted to the court upon the briefs in the case of Horner vs. De Young et al. Saturday, March 25, 1848.

Judgment.

MONDAY, *April* 5, 1848.

THOMAS M. LEAGUE, appellant,
vs.
JOHN DE YOUNG, surveyor for the district of Galveston, and SAMUEL P. BROWNE, deputy, appellees. } No. 660.

Appeal from Galveston.

Judgment of the court announced by Judge Lipscomb.

2601

This cause coming on to be heard on the transcript of the record of the court below, and the same being inspected, and the argument of counsel heard, because it seems to the court here that there was no error in the judgment of the court below, it is ordered, adjudged, and decreed, that the judgment of the court below be in all things affirmed, and the appellant pay all cost of this cause in this court expended, and this decision be certified below for observance.

Opinion of sup. court.

LEAGUE, appellant,
vs.
DE YOUNG.

Supreme court, December term, 1847.—Appeal from the district court of Galveston county.

In this case I believe the judgment of the court below ought to be affirmed, for the following reasons:

First. Because a mandamus is not a process that can be resorted to against a State without her consent, and this is a suit in effect against the State, and conducted by no authority derived from the State; that it is an attempted evasion of the well established principle that sovereign authority cannot be sued in its own courts without its express assent to such suit.

2d. Because the different acts of the Congress of the Republic of Texas to detect fraudulent land certificates are valid, and not repugnant to the constitution of the Republic of Texas, under which they were enacted; that the claims to be acted on and regulated by those laws were only imperfect obligations, and could never be enforced by a judicial proceeding until the political authority had prescribed the mode; that the obligation remains imperfect on the part of the government as long as it retains the fee; and, should it refuse at any time before the imperfect obligation had matured into perfect title, it cannot be sued for such refusal unless it consents to being so sued; that, as an incident to the fee being in the government, it has the right to attach such terms and impose such regulations as may be deemed most consistent with sound policy; that this has been the uniform construction given to the power of the legislature over all inchoate and imperfect claims to land by the judicial authority of the country, will be manifest by reference to the decisions of the supreme court of the Republic, in the board of land commissioners of Nacogdoches county vs. Reily, and in the case of Walling vs. Republic, and by the decisions of this court in Trimble et al. vs. Smithers, and in Jones vs. Menard, and the adm'r of Norton vs. Ward, commissioner of the general land office.

3d. Because the plaintiff, not having sued the State in the mode pointed out by law, and in which alone she consented to be sued, cannot be allowed to seek a remedy in this action.

LIPSCOMB.

I concur.

WHEELER.

Afterwards, to wit, on the twenty-ninth day of August, A. D. one thousand eight hundred and forty-nine, the said Thomas M. League, by his attorney, Wm. G. Hale, produced to the said supreme court here the writ of the said United States of America for the correcting of the errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable chief justice and associate justices of the supreme court of the State of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between Thomas M. League, appellant, and John De Young, surveyor, for the district of Galveston, and Samuel P. Brown, deputy, appellees, on an appeal from the judgment of the district court of the State of Texas, for the county of Galveston, wherein was drawn in question the validity of a treaty of the United States, and the decision was against its validity; wherein was drawn in question the validity of statutes of said State, on the ground of their being repugnant to the Constitution, treaties, and laws of the United States, and the decision was in favor of their validity; and wherein was drawn in question the construction of a clause of the Constitution and of a treaty of the United States, and the decision was against the title, right, and privilege specially set up or claimed under such clause of the said Constitution and treaty, a manifest error hath happened, to the great damage of the said Thomas M. League, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly, and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by S. NELSON,
Ass. Justice of the Sup. Court.
January 29, 1849.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid rendered, with all things relating to the same, together with the said writ of error, and the citation herein, and a copy of the bond filed in this court, are hereby transmitted to the said Supreme Court accordingly.

Citation.

The United States of America, to John De Young, surveyor of the district of Galveston, and Samuel P. Browne, deputy, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Texas, wherein Thomas M. League is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Nelson, one of the associate justices of the Supreme Court of the United States, this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-nine.

S. NELSON,
Jan. 29, 1849. *Ass. Justice of the Sup. Ct.*

Affidavit.

On the fourteenth day of August, in the year of our Lord one thousand eight hundred and forty-nine, personally appeared William G. Hale, before me, the subscriber, commissioner of the United States to take affidavits and acknowledgments of bail within the district of Texas, and makes oath that he delivered a true copy of the within citation to Hiram B. Waller, district attorney of the State of Texas, for the first judicial district and county of Galveston, and attorney of record for the aforementioned appellees in the district court of the said State, for the county aforesaid, on the fourth day of June, in the present year; and that he also delivered a true copy of the within citation to John W. Harris, attorney general of the State of Texas, and attorney for the said appellees in the supreme court of the said State, on the first day of the said month of June.

A. M. HUGHES,
Commissioner of the United States.

District court of the United States, district of Texas.

Present, the honorable John C. Watrous, judge; James H. Cocke, marshal; and,

Ordered, that Archibald M. Hughes be, and he is hereby, appointed one of the masters of this court; and the said Archibald M. Hughes thereupon came into open court, and took an oath to support the Constitution of the United States, and an oath of office.

I, James Love, clerk of the district court of the United States, for the district of Texas, hereby certify, that the above is a correct copy of the order entered upon the records of this court.

Witness my hand and the seal of the said court, at Galveston, this 14th day of August, A. D. 1849.

[SEAL.] JAMES LOVE, *Clerk.*

Bond.

Know all men by these presents that we, Thomas M. League, H. B. Martin, and J. G. Burnham, of the State of Texas, and John Paine, of the city of New York, are held and firmly bound unto John De Young, surveyor, for the district of Galveston, and Samuel P. Browne, deputy, in the full and just sum of three hundred dollars, to be paid to the said John De Young and Samuel P. Browne as aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents; sealed with our seals and dated this first day of January, in the year of our Lord one thousand eight hundred and forty-nine.

Whereas, lately at a term of the supreme court of the State of Texas, in a suit depending in said court between Thomas M. League, appellant, and the said John De Young and Samuel P. Browne, appellees therein, a judgment was rendered against the said Thomas M. League, and the said Thomas M. League having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit; and a citation directed to the said John De Young and Samuel P. Browne, as aforesaid, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Thomas M. League shall prosecute his writ of error to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

THOMAS M. LEAGUE, [SEAL.]
H. B. MARTIN, [SEAL.]
J. G. BURNHAM, [SEAL.]
JOHN PAINE. [SEAL.]

Sealed and delivered in presence of—
WILLIAM G. HALE.
And as to John Paine,
WILLIAM H. PAINE.

In testimony that the foregoing is a true copy taken from the records and proceedings of the said supreme court of the State of Texas, I hereunto subscribe my name and affix the seal of the said supreme court, this twenty-ninth day of August, A. D. eighteen hundred and forty-nine.

[L. S.]

THOMAS GREEN,
Clerk of the Supreme Court of the State of Texas.

In the Supreme Court of the United States, December term, 1849.

THOMAS M. LEAGUE, plaintiff in error,
vs.
JOHN DE YOUNG and SAMUEL P. BROWNE,
defendants in error.

And now, at this day, comes the said Thomas M. League, by his attorney, and saith that in the record and proceedings in the above entitled cause in the supreme court of the State of Texas, and also in the giving of the judgment thereof in the cause aforesaid, it is manifestly erred in this, to wit:

First. That the judgment aforesaid was given for the said John De Young and Samuel P. Browne against the said Thomas M. League, where, by the law of the land, and the Constitution and laws of the said United States, judgment should have been given for the said Thomas M. League against the said John De Young and Samuel P. Browne.

Second. That the validity of several of the statutes of the said State was drawn in question in the said suit, on the ground of their being repugnant to the Constitution of the United States; and the decision of the said supreme court of the State of Texas, being the highest court of law or equity in which a decision in the said suit could be had, was in favor of the validity of such statutes; where, by the Constitution and laws of the United States, it should have been against their validity.

Third. That the validity of the authority exercised by the said defendants in error under the laws of the said State of Texas, in refusing to sanction or execute the surveys demanded by the said plaintiff in error, was drawn in question in the said suit, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision of the said supreme court of the State of Texas, by the judgment aforesaid, was in favor of the validity of such authority; where, by the Constitution and laws of the United States, it should have been against its validity.

Fourth. That the construction of a clause of the Constitution of the United States, to wit, a clause of the tenth section of the first article of the same, providing that no State shall pass any law impairing the obligation of contracts, was drawn in question in the said suit, and the decision of the said supreme court of the State of Texas, by the judgment aforesaid, was against the right, title, and privilege set up and claimed thereunder by the said plaintiff in error; where, by the Constitution and laws of the United States, it should have been in favor of the same.

Fifth. That the construction of a treaty and statute of the United States, to wit, the joint resolution for annexing Texas to the United States, was drawn in question in the said suit, and the decision of the said supreme court of the State of Texas, by the judgment aforesaid, was against the right, title, privilege, and exemption set up and claimed under the same, by the said plaintiff in error; where, by the Constitution and laws of the United States, it should have been in favor of such right, title, privilege, and exemption.